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Victims, Violence and Voice: Transitional Justice, Oral History and Dealing with the Past

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Introduction

Transitional justice is concerned with the legal and social processes established to deal with the legacy of violence in post-authoritarian and post-conflict contexts.¹ The interview—in different guises, contexts and settings—is at the heart of most transitional justice processes. Prosecutorial mechanisms, truth recovery commissions, assessments for reparations, applications for amnesty—all of these and more are fueled by the art of one human being interviewing another and then presenting or “re-presenting” the material recorded, to make it “fit” with the broader transitional goals of a particular institution. Most transitional justice institutions are, in the final analysis, “creatures of law.”² They are typically established by statute, their work is molded and shaped by lawyers, and their outcomes are benchmarked against what is or is not acceptable under domestic and international law.³

In such a context, it is little wonder that some transitional scholars have expressed concerns about the dominance of legalism within the field and the instrumentalization of those most directly affected by past violence. A commonly prescribed—but as yet largely empirically untested—corrective is that transitional justice theory and practice

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¹ For an introduction to the field see RUTI G. TEITEL, *TRANSITIONAL JUSTICE* (Oxford, Oxford Univ. Press 2000). For the broader context and an overview of the “genealogy” of transitional justice, see Ruti G. Teitel, *Transitional Justice Genealogy*, 16 HARV. HUM. RTS. J. 69, 94 (2003).

² See KIERAN MCEVOY & LORNA MCGREGOR, *TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE* 30 (Oxford, Hart Publishing 2008).

³ See Kieran McEvoy & Louise Mallinder, *Amnesties in Transition: Punishment, Restoration, and the Governance of Mercy*, 39(3) J.L. & Soc’y 410, 412-13 (2012).

must become more open to interdisciplinary insights and perspectives.⁴ As a historian now working at a law school, I hope to develop this proposition in this article, by reflecting on the theoretical and practical intersections between law, history, and the interview. To focus my analysis, I apply an oral history lens to transitional justice, and concentrate in particular on interview-based initiatives that purport to be “victim-centered.”⁵ Before introducing the case study proper, it is worth reflecting in brief on some of the key areas of scholarship that connect law and history.

At least four broad, and at times overlapping, areas of scholarly inquiry can be identified at the intersection between law and history: legal history, *i.e.* the history of particular legal institutions, practices, or ways of “seeing” the world; the performative aspects of legal institutions and legal actors in light of public history and posterity; the inter-relationship between law and economics, which is inevitably shaped by historical experience; and the role of law as a driver or responder to social and political change. Although legal history has traditionally been dominated by documentation of the “science of law”—the evolution of laws, doctrines, and institutions—the remit of this particular field of scholarship has expanded exponentially in recent decades.⁶ Analysis

⁴ See Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field”*, 3(1) INT’L J. TRANS. JUST. 5, 5-27 (2009); McEvoy, K., *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34(4) J.L. & SOC’Y 411, 411-40 (2007); Tshepo Madlingozi, *On Transitional Justice Entrepreneurs and the Production of Victims*, 2(2) J. HUM. RTS. PRAC. 208, 208-28 (2010); RAMA MANI, *BEYOND RETRIBUTION: SEEKING JUSTICE IN THE SHADOWS OF WAR* (Cambridge, Polity Press 2002).

⁵ The term “victim-centered” is commonly employed in transitional justice to denote processes that prioritize the wants and needs of victims. These include initiatives that respond directly to requests from victims’ representatives as well as mechanisms that have been tempered to accommodate the specific vulnerabilities and requirements of various categories of victims. See further Simon Robins, *Towards Victim-Centred Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal*, 5 INT’L J. TRANS. JUST. 1, 77-78 (2011).

⁶ For a classic “orthodox lawyer’s legal history” see ROSCOE POUND, *INTERPRETATIONS OF LEGAL HISTORY* (Cambridge, Cambridge Univ. Press 1923). For a critique of “fundamentally conservative political preferences dressed up in the neutral garb of expert and objective legal history” see Morton J. Horwitz, *The Conservative Tradition in the Writing of American Legal History*, 17(3) AM. J. LEGAL HIST. 275, 276 (1973).

of the competing sway of legal authority and philosophy from the Greeks and Romans through to the present day is no longer confined to the charting of “expert and objective legal history.” It now also embraces the “law in context” remit of socio-legal studies and the sociology of the professions.⁷ The literature on the “performance” of law for posterity follows both the flow of Goffman’s classic analysis of the “dramaturgical” elements of judicial performance,⁸ as well as reflexive reviews of the various post-Cold War institutions established to investigate mass violations of international humanitarian law.⁹

Within the broad field of law and economics, a number of theoretical strands can be discerned including the application of economic paradigms to rule formulation and legal doctrine, the evaluation of the competing efficiencies of markets and courts, and the extent to which law is created by social conditions including real economic interests.¹⁰ These dynamics have, unsurprisingly, shaded historical analysis of legal

⁷ H. PATRICK GLENN, *LEGAL TRADITIONS OF THE WORLD: SUSTAINABLE DIVERSITY IN LAW* (4th ed., Oxford, Oxford Univ. Press 2010); DAVID M. RABBAN, *LAW’S HISTORY: AMERICAN LEGAL THOUGHT AND THE TRANSATLANTIC TURN TO HISTORY* (Cambridge, Cambridge Univ. Press 2013); David Sugarman, *From Legal Biography to Legal Life Writing: Broadening Conceptions of Legal History and Socio-legal Scholarship*, 42 J.L. & SOC’Y 7, 7-33 (2015); Sida Liu, *The Legal Profession as a Social Process: A Theory on Lawyers and Globalization*, 38(3) L. & SOC. INQ. 670, 670-93 (2013).

⁸ ERVING GOFFMAN, *THE PRESENTATION OF SELF IN EVERYDAY LIFE*, xi (New York, Anchor Books 1959).

⁹ Reflecting on the intersection of law and memory in trials associated with large-scale state brutality Osiel states: “the fact that the public spotlight is trained so brightly upon participants in such proceedings makes it very difficult for prosecutors and judges to conceal – and to insulate from incisive criticism by defense counsel – their effort to frame the legal narrative in light of the public’s anticipated response to alternative tropes and story-lines”. Mark J. Osiel, *Constructing Memory with Legal Blueprints*, in *THE HOLOCAUST’S GHOST: WRITINGS ON ART, POLITICS, LAW, AND EDUCATION* 424 (F. C. Decoste & Bernard Schwartz eds., Edmonton, Alberta, Univ. of Alberta Press 2000). For an incisive analysis of the interplay between “judicialized history” and collective memory in the Tadić judgment, see José E. Alvarez, *Rush to Closure: Lessons of the Tadić Judgment*, 96 MICH. L. REV. 2031, 2105-8 (1998). See also RICHARD ASBY WILSON, *WRITING HISTORY IN INTERNATIONAL CRIMINAL TRIALS* (Cambridge, Cambridge Univ. Press 2011), and LAWRENCE DOUGLAS, *THE MEMORY OF JUDGEMENT MAKING: LAW AND HISTORY IN THE TRIALS OF THE HOLOCAUST* (New Haven, Yale Univ. Press 2001).

¹⁰ RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* (3rd ed., Boston, Little Brown 1986); WILLIAM M. LANDES & RICHARD A. POSNER, *THE ECONOMIC STRUCTURE OF TORT LAW* (Harvard Univ. Press 1987); FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW* (Harvard Univ. Press 1991); DAVID D. FRIEDMAN, *LAW’S ORDER: WHAT ECONOMICS HAS TO DO WITH LAW AND WHY LAW MATTERS* (New Jersey, Princeton Univ. Press 2000).

institutions and norms as theorists look to the past to illustrate and justify their positions.¹¹ Finally, the framework that is perhaps most relevant for current purposes is that which examines the relationship between law and political and social change. Drawn primarily from the law and society or socio-legal studies tradition, this framework encompasses scholarship concerning law and slavery,¹² law and social movements in fields such as race, gender, sexuality, and disability,¹³ and, of course, the field of transitional justice.

The field of “transitional justice” emerged in the post-Cold War era in response to the collapse of regimes across Latin America, Eastern Europe, the former Soviet Regime, and the African continent.¹⁴ The focus on transitions from military and authoritarian regimes quickly expanded to include consideration of (quasi) democratic regimes emerging from periods of sustained conflict or violence, and indeed settled democracies

¹¹ See, for example, Richard S. Markovits, *How American Legal Academics' Positions on Economic-Efficiency Analysis, Moral Philosophy and Valid Legal Argument Disserve Law and Society Empirical Research*, in LAW, SOCIETY AND HISTORY: THEMES IN THE LEGAL SOCIOLOGY AND LEGAL HISTORY OF LAWRENCE M. FRIEDMAN (Robert W. Gordon & Morton J. Horwitz eds., Cambridge, Cambridge Univ. Press 2011). For an overview of the place of such debates in wider legal history see ECONOMICS OF LEGAL HISTORY (Daniel Klerman et al. eds., Massachusetts, Edward Elgar 2015).

¹² Mark Tushnet, *The American Law of Slavery, 1810-1860: A Study in the Persistence of Legal Autonomy*, 10(1) L. & SOC'Y REV. 119, 119-84 (1975); SUZANNE MIERS, SLAVERY IN THE TWENTIETH CENTURY: THE EVOLUTION OF A GLOBAL PROBLEM (Alta Mira Press, 2003).

¹³ For an authoritative synthesis of the broader law and society scholarship see LAW AND SOCIETY: CRITICAL CONCEPTS IN LAW (David Cowan, Linda Mulcahy, & Sally Wheeler eds., London, Routledge 2014). For more specific guides to the relevant law and social movements literature see MICHAEL W. McCANN, LAW AND SOCIAL MOVEMENTS (Ashgate, 2006); Sandra R. Levitsky, *Law and Social Movements: Old Debates and New Directions*, in THE HANDBOOK OF LAW AND SOCIETY (Austin Sarat and Patricia Ewick eds., John Wiley & Sons 2015); Lauren B. Edelman, *Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law*, 97(6) AM. J. SOC. 1531, 1531-76 (1992); DENNIS CHONG, COLLECTIVE ACTION AND THE CIVIL RIGHTS MOVEMENT (Chicago, Univ. of Chicago Press 1991).

¹⁴ For analysis of the “global democratic revolution” and the causes and nature of associated transitions see SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY (Oklahoma, Univ. of Oklahoma Press 1993). For an overarching analysis of the complex issues that arise during transitional periods, including the challenge of constructing the language for a new jurisprudence, see RUTI G. TEITEL, TRANSITIONAL JUSTICE (Oxford, Oxford Univ. Press 2000).

struggling to come to terms with the legacies of institutional abuse, racism, colonialism, or other historical wrongs.¹⁵

From the outset, this field has fueled both scholarly and “real-world” endeavors. The latter initially fixated on the twin aims of holding former regimes to account for past abuses and strengthening the rule of law. A series of high-profile international tribunals (including the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the International Criminal Court) and more than two dozen truth and reconciliation commissions arguably institutionalized the contours of the developing field.¹⁶ Alongside such prosecutorial and truth recovery mechanisms, an array of restorative and institutional reform initiatives developed.

As the field matured and developed, transitional justice scholars have attempted to probe and unpack underlying assumptions about the conception of justice, the relationship between law and liberalization, and law and political change.¹⁷ As I discuss in detail below, a persistent concern in recent years has been the perceived disconnect

¹⁵ See, for example, Rosemary L. Nagy, *The Scope and Bounds of Transitional Justice and the Canadian Truth and Reconciliation Commission*, 7 INT’L J. TRANS. JUST. 1 (2012); Anne-Marie McAlinden, *An Inconvenient Truth: Barriers to Truth Recovery in the Aftermath of Institutional Child Abuse in Ireland*, 33(2) LEGAL STUD. 189, 189-214 (2012). For analysis of the meaning of “transition” in transitional justice see Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, in TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE (Naomi Roht-Arriaza & Javier Meriezcurrera eds., Cambridge, Cambridge Univ. Press 2006).

¹⁶ The UN Secretary-General’s 2010 Guidance Note lists the relevant components of transitional justice as follows: prosecution initiatives; facilitating initiatives in respect of the right to truth; delivering reparations; institutional reform; and national consultation. See <www.unrol.org/files/TJ_Guidance_Note_March_2010FINAL.pdf> 7-10 (last visited Nov. 18, 2015).

¹⁷ For a probing analysis of the inherent tensions within the “field” of transitional justice (including analysis of the competing perspectives of activists, policy makers, and academics) and its underlying political dynamics see Christine Bell, *Transitional Justice, Interdisciplinarity and the State of the “Field” or “Non-Field”*, 3(1) INT’L J. TRANS. JUST. 5, 5-27 (2009).

between international legal norms and practices and local priorities and needs. In particular there is a growing concern that, not only do transitional justice mechanisms regularly fail to deliver for victims, but that the mechanisms themselves may be part of the problem.¹⁸

By way of background, this paper is informed by over fifteen years of fieldwork, encompassing more than two hundred personal interviews regarding the Northern Ireland conflict.¹⁹ These were conducted in the course of three successive research projects: an ethnographic and historical analysis of the deeply divided town in which I grew up; a major study of the experience of politically motivated prisoners in Britain and Ireland (1920-2000); and a wide-ranging exploration of the Northern Ireland peace process.²⁰ The latter project involved the creation of an oral archive of one hundred lengthy interviews, the development of an interview training program, the stimulation

¹⁸ For an authoritative introduction to the scholarship on transitional justice “from below” see McEVOY, K. & MCGREGOR, L., *TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE* 30 (Oxford, Hart Publishing 2008).

¹⁹ Between 1966 and 1998 more than 3,600 people lost their lives as a result of the Northern Ireland conflict and thousands more were injured and maimed: when scaled up to UK population levels, the death toll is in the region of 135,000. (The population of Northern Ireland during this period was in the region of 1.5 million. If the deaths for 1972 are scaled up to the contemporary UK population of approximately 56 million the figure would be closer to 19,000.) Throughout the 1980s and early 1990s the state had the highest overall proportion of prisoners in Europe, the vast majority of whom were convicted of conflict-related offenses (114 per 100,000 in 1991. See Northern Ireland Office, *Crime and the Community: A Discussion Paper on Criminal Justice Policy in Northern Ireland* (Belfast, HMSO, March 1993)). Violence peaked in 1972 with almost 500 deaths and then gradually declined to an average of approximately 100 annual fatalities between 1976 and 1994. This level of casualties is low in comparison to instances of mass atrocity and genocide, but the nature and duration of the conflict drip-fed trauma across several generations.

²⁰ Focusing on the relatively under-studied pre-conflict period (1945-1969), my Ph.D. thesis examined conflict and memory in a deeply divided Northern Ireland town. See Anna Bryson, “*Whatever You Say, Say Nothing*”: *Researching Conflict and Memory in Mid-Ulster, 1945-1969*, 35 *ORAL HIST.* 45, 45-56 (2007). The “Irish Political Prisoners 1920-2000” project was led by Professor Seán McConville and was funded by the British and Irish governments, the Leverhulme Trust, the Guggenheim Foundation, and Atlantic Philanthropies. Between 2004 and 2009 I was employed as the lead researcher: in addition to archival research I was centrally involved in the development and creation of an oral archive of 160 lengthy interviews (conducted mainly in Ireland, North and South, and Britain, with some further work in North America and Australia). Professor McConville and I jointly directed the follow-on *Peace Process; Layers of Meaning* project, an initiative supported by €1.1 million from the Special European Programme Body’s PEACE III fund.

and completion of three cross-community and cross-border oral history projects, and the delivery of scholarly and practical outputs.²¹

In 2014, I advanced from Northern Ireland-focused research to an international comparative project that examines the role of lawyers in transition and conflict.²² The aim is to explore the role of lawyers, not just as technical agents or actors, but also as “real people” at work within a complex legal, political and cultural system. Drawing on more than 120 interviews in Cambodia, Chile, Israel, Palestine, Tunisia, and South Africa, it seeks to establish a comparative and thematic framework for lawyering in conflicted and transitional societies.

The skills acquired in the course of my prior work on the history of punishment, conflict, and peace-making in Ireland were both relevant and transferable, but there were three significant shifts. Firstly, as noted, my perspective expanded to include the study of conflict beyond Northern Ireland. Secondly, from a methodological point of view, intense local analysis gave way to international comparative case studies. Thirdly, as I will elaborate below, there was a distinct disciplinary shift. As a historian now working with a team of transitional justice lawyers, my research is no longer concentrated on studying the past. Rather, my current focus is on the relevance and applicability of lessons and experiences from the past to contemporary challenges. There is undoubtedly significant overlap with respect to methods, style, and approach, but the nodes of comparison are nonetheless instructive.

²¹ Our funding carried with it an explicit commitment to actively further the cause of peace and reconciliation and our various outputs thus bore the hallmarks of both academic research and community engagement. See www.peaceprocesshistory.org (last visited Nov. 17, 2015).

²² This major international comparative research project is funded by the RCUK Economic and Social Research Council (ES/J009849/1). See www.lawyersconflictandtransition.org (last visited Nov. 17, 2015).

I shall begin this paper by attempting to locate post-conflict oral history work on the transitional justice axis and by introducing some of the ways in which interviews are deployed in transitional justice settings. In the next section, I seek to illustrate the ways in which the voice of victims continues to be misappropriated, manipulated, and immobilized in transitional justice practices. Drawing on insights gleaned in the course of my research in Northern Ireland and the six other international case studies, I argue that a well-designed oral history approach can usefully illuminate many of these dangers—dangers to which lawyers in particular can sometimes appear less sensitive. In the penultimate section, I acknowledge shared methodological challenges and limitations before offering some concluding reflections on the ways in which legal and historical mechanisms for capturing voice might converge in the interests of victim-centered transitional justice.

Oral History & Transitional Justice

In transitional justice settings, oral history is often viewed as a “soft touch” approach, operating alongside or in place of formal truth recovery mechanisms, such as truth and reconciliation commissions.²³ Whilst the value of “giving voice” to marginalized and “subaltern” witnesses is widely recognized, it is frequently couched within the general terrain of “cultural rights” and “memorialization.”²⁴ Methodologies vary widely and

²³ With regard to legalist scholarship Harris Rimmer notes that: “The overwhelming majority of international law academics advocate the holding of trials as the preferred accountability option for post-conflict settings.” Susan Harris Rimmer, *Sexing the Subject of Transitional Justice*, 32(1) AUST. FEM. L. J. 123, 126 (2010).

²⁴ The overview of transitional justice provided by the International Center for Transitional Justice effectively relegates broad-based testimony-gathering initiatives to the “also-ran” category. The four key elements of a “Comprehensive Transitional Justice Policy” are listed as follows: criminal prosecutions, reparations, institutional reform, and truth commissions. An

may embrace individual life narratives, cultural memory, and community advocacy as well as elements of artistic and literary performance.²⁵ In terms of outputs, the digital age has revolutionized the manner in which we access and integrate oral and audio-visual recordings, giving way to online archives, films and documentaries, educational tools, eBooks and other interactive resources.²⁶

The energy for this type of work has typically come “from below,” with human rights activists and academics seeking to address perceived deficiencies in “top-down” initiatives, many of which have a legalistic bent.²⁷ A prototypal illustration of this approach is provided by the Holocaust: from the early 1950s increasing numbers of survivors came forward to correct emerging narratives and to thus ensure that the atrocities they witnessed would not be downscaled or somehow sanitized in the future.²⁸ A related concern shared by many such witnesses was that the limited

adopter suggests that: “Memorialization, for example, the various efforts to keep the memory of the victims alive through the creation of museums, memorials, and other symbolic initiatives such as the renaming of public spaces, etc., has become an important part of transitional justice in most parts of the world.” The latter speaks to the spirit of much post-authoritarian and post-conflict oral history work, without explicitly acknowledging it. *See* <www.ictj.org/about/transitional-justice> (last visited Nov. 18, 2015).

²⁵ For an overview of some relevant projects see ARAS RAMAZAN ET AL., DOCUMENTING AND INTERPRETING CONFLICT THROUGH ORAL HISTORY: A WORKING GUIDE (New York, Columbia Univ. Center for Oral History in association with The American Academic Research Institute in Iraq 2013).

²⁶ The Oral History Society provides a gateway to more than 100 key online oral history resources at: www.ohs.org.uk/weblinks.php (last visited Oct. 10, 2015).

²⁷ See MCEVOY, K. & MCGREGOR, L., TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE 1-15 (Oxford, Hart Publishing 2008), for a discussion of the meaning of “from below” work.

²⁸ The first such testimony project was initiated by the Israeli government-sponsored Yad Vashem Holocaust Martyrs’ and Heroes’ Remembrance Authority. Numerous academic and archive projects have since drawn on the accounts of the several million surviving witnesses of the Nazi death camps. This work gathered popular impetus in the early 90s in the wake of Spielberg’s Oscar-winning film, *Schindler’s List*. Examples of major oral testimony collections include the United States Holocaust Memorial Museum, the Fortunoff Video Archive at Yale University and the University of Southern California Shoah Foundation. See LAWRENCE L. LANGER, HOLOCAUST TESTIMONIES: THE RUINS OF MEMORY (New Haven, Yale Univ. Press 1991) for an exploration of the forms of memory contained within the Fortunoff Archive. *See also* Henry Greenspan, *Survivors’ Accounts*, in THE OXFORD HANDBOOK OF HOLOCAUST STUDIES 414-28 (Peter Hayes & John K. Roth eds., Oxford, Oxford Univ. Press 2010); AFTER REPRESENTATION?: THE HOLOCAUST, LITERATURE, AND CULTURE (R. Clifton Spargo & Robert M. Ehrenreich eds., New Brunswick, NJ, Rutgers Univ. Press 2009).

trials held at the tribunals in Nuremberg had captured but a fraction of the horrors of the camps.²⁹ This prioritization of individual testimony tracked wider trends within the humanities and the social sciences. In particular, it kept pace with the political impulse to empower the voiceless and thus re-tilt the balance of history.³⁰

Invoking the spirit of E.H. Thompson's classic "The Making of the English Working Class,"³¹ Paul Thompson called attention in the 1970s to the radical potential of oral history:

Since the nature of most existing records is to reflect the standpoint of authority, it is not surprising that the judgement of history has more often than not vindicated the wisdom of the powers that be. Oral history by contrast makes a much fairer trial possible: witnesses can now also be called from the under-classes, the unprivileged, and the defeated. It provides a more realistic and fair reconstruction of the past, a challenge to the established account.³²

A similar impetus can be detected in Latin America in the 1980s, with oral history research predominantly focusing on the recovery of the history of peasants, members

²⁹ See TELFORD TAYLOR, *THE ANATOMY OF THE NUREMBERG TRIALS* (Little, Brown & Co. 1993). For a detailed analysis of the role and legacy of the military tribunals, see *REASSESSING THE NUREMBERG MILITARY TRIBUNALS TRANSITIONAL JUSTICE, TRIAL NARRATIVES, AND HISTORIOGRAPHY* (Kim C. Priemel & Alexa Stiller eds., New York & Oxford, Berghahn Books 2014).

³⁰ This found popular (and somewhat contentious) representation in Britain in the History Workshop movement, which vigorously promoted feminist and labor history. For a succinct review of some of the movement's main developments see Staughton Lynd, *Oral History From Below*, 21(1) *ORAL HIST. REV.* 1, 1-8 (1993).

³¹ One of Thompson's explicit aims in writing this book was "to rescue the poor stockinger, the Luddite cropper, the 'obsolete' hand-loom weaver, the 'utopian' artisan, and even the deluded follower of Joanna Southcott, from the enormous condescension of posterity". E.P. THOMPSON, *THE MAKING OF THE ENGLISH WORKING CLASS* 12 (New York, Pantheon Books 1963).

³² PAUL THOMPSON, *THE VOICE OF THE PAST* 5 (1st ed., Oxford, Oxford Univ. Press 1978).

of Indian communities, urban workers, and other perspectives that were unlikely to feature in official narratives.³³

The desire to rescue those hitherto “hidden from history” not surprisingly intensifies in the context of post-conflict reconstruction. The *Documenta Center for Dealing with the Past in Croatia*, for example, set out to bridge a major gap in the official records and to thus facilitate mature dialogue on interpretations of the past.³⁴ Such work is often pitted against two alternative ideological projects: one exonerating former regimes as benign entities who may have been guilty of occasional excesses; the other wedded to the belief that looking to the past is a means of preventing the future.³⁵

For many oral history and memory activists, the desire to secure the accounts of frail and aging survivors provides an additional stimulus. For example, echoing the notion prominent in transitional justice discourses of a defined “window of opportunity,” *Memoria Abierta* in Argentina emphasized from the outset that the work of recovering damaged documents and capturing the oral testimonies of witnesses must proceed

³³ See Dora Schwarzstein, *Oral History in Latin America*, in *ORAL HISTORY: AN INTERDISCIPLINARY ANTHOLOGY* 417-25 (David K. Dunaway & Willa K. Baum eds., 2nd ed., Lanham, Altamira Press 1996).

³⁴ The Documenta Center for Dealing with the Past was founded by the Centre for Peace, Non-Violence and Human Rights, Osijek, the Centre for Peace Studies, the Civic Committee for Human Rights and the Croatian Helsinki Committee. See www.documenta.hr (last visited Nov. 17, 2015). In 2011 Documenta joined the international initiative for a Charter of acknowledged casualties of armed violence. This charter has since been adopted by more than forty humanitarian and human rights organizations. See <www.everycasualty.org> (last visited Nov. 23, 2015).

³⁵ For an overview of the role of the human rights movement in memory, truth and justice work in Argentina see Elizabeth Jelin, *The Politics of Memory: The Human Rights Movement and the Construction of Democracy in Argentina*, 21(2) *LATIN AM. PERSPECTIVES* 38, 38-58 (1994). See in particular the argument that the human rights movement became an “entrepreneur” at the time of transition, promoting a certain kind of memory.

“before it is too late.”³⁶ A similar sense of urgency has fueled the significant rise in recent years of oral history work in crisis environments.³⁷

In light of this emphasis on rebalancing or “democratizing” history, it is not surprising to find a strong feminist current in conflict-related oral history work. For example, the Israeli “Gender and Settler Colonialism: Women’s Oral Histories in the Naqab” project set out to counter prevailing assumptions about Naqab Bedouin women’s struggle against colonialism. Predicated on a gendered “history from below” approach, the project drew primarily on first-hand oral testimonies.³⁸ Likewise the *Nomes e Voces* (Names and Voices) research program in Galicia, Spain, which includes a significant oral archive, has a dedicated gender project entitled *Vermellas* (Reds). This element of the program specifically focuses on the political persecution and active agency of women during the Spanish civil war and the Franco dictatorship.³⁹

³⁶ See, for example, Rebecca K. Root, *Through the Window of Opportunity: The Transitional Justice Network in Peru*, 31(2) HUM. RTS. Q. 452, 452-73 (2009). Displaying a similar sense of urgency, the digital archive of Cambodian Holocaust Survivors exhorts: “Only by beginning the process now, before it is too late, can these memories live on. By archiving your stories and your memories, you will leave a legacy to the world. We encourage you to tell your life-story to your children, nieces, and nephews, such that they may understand whence and how far you have come.” See <www.cybercambodia.com/dachs/about.html> (last visited Nov. 17, 2015).

³⁷ Voice of Witness is a non-profit organization that uses oral history to illuminate contemporary human rights crises in the U.S. and around the world. Founded by author Dave Eggers and physician/human rights scholar Lola Vollen, Voice of Witness publishes a book series that depicts human rights injustices through the stories of the men and women who experience them. The Voice of Witness Education Program brings these stories, and the issues they reflect, into high schools and impacted communities through oral history-based curricula and holistic educator support. Examples include: *OUT OF EXILE: NARRATIVES FROM THE ABDUCTED AND DISPLACED PEOPLE OF SUDAN* (Craig Waltzer ed., San Francisco, McSweeney’s Books 2008); *PALESTINE SPEAKS: NARRATIVES OF LIFE UNDER OCCUPATION* (Mateo Hoke & Cate Malek eds., San Francisco, McSweeney’s Books 2014); *NOWHERE TO BE HOME: NARRATIVES FROM SURVIVORS OF BURMA’S MILITARY REGIME* (Maggie Lemere & Zoë West eds., San Francisco, McSweeney’s Books 2011); and *HOPE DEFERRED: NARRATIVES OF ZIMBABWEAN LIVES* (Peter Orner & Annie Holmes eds., San Francisco, McSweeney’s Books 2011). See further www.voiceofwitness.org (last visited Nov. 17, 2015). For an overview of the genre see *LISTENING ON THE EDGE: ORAL HISTORY IN THE AFTERMATH OF CRISIS* (Mark Cave & Stephen M. Sloan eds., Oxford, Oxford Univ. Pres, 2014).

³⁸ See MANSOUR NSASRA ET AL., *THE NAQAB BEDOUIN AND COLONIALISM* (Routledge 2014).

³⁹ The Names and Voices project was initiated in 2006 as a result of an agreement between the three Galician Universities with the Galician Ministry for Culture to explore the history of

Beyond the general aim of acknowledging and documenting female perspectives on the past, many gender-based projects are designed to actively empower participants. Combining oral history approaches with advocacy, memorialization, and art, the *Asociación Madres de Plaza de Mayo* in Argentina not only draws attention to the cases of the disappeared, but it also seeks collectively to resist dictatorial and patriarchal oppression.⁴⁰ In other contexts the work of empowerment is concentrated in the art of giving testimony. As Agger has argued in the context of refugee women, private shame can acquire political dignity through the process of bearing witness to trauma.⁴¹ Such projects have in turn provoked comparative gender analysis of trauma responses and narration.⁴²

In some instances, oral history “activists” seek to supplement and correct grander “top down” efforts to deal with the past. For example, in South Africa, the most notable oral

repression in the region during the Civil War and the period of Franco’s dictatorship and to supply relevant information to victims (including a fully searchable database of all the victims of repression). The work of gathering oral testimony is in this instance wedded to painstaking archival work (including consultation of civil registries, judicial papers, and parish registers). See www.nomesevoces.net (last visited Nov. 16, 2015).

⁴⁰ The Madres de Plaza de Mayo was formed by the mothers of those who were disappeared during the military dictatorship between 1976 and 1983. In addition to memorialization work it actively campaigns for justice and redress for the victims. In 1986 it split into two groups – Asociación Madres de Plaza de Mayo and Madres de Plaza de Mayo – Línea Fundadora. See Nora Amalia Femenía & Carlow Ariel Gil, *Argentina’s Mothers of Plaza de Mayo: The Mourning Process from Junta to Democracy*, 13(1) FEMINIST STUD. 9, 9-18 (1987). Standing back from the growing canon of oral histories of female experiences, Sherna Berger Gluck and Daphne Patai published in 1991 a ground-breaking series of essays focusing on the power dynamics at play in such interviews, and on the tensions between community advocacy and academic research. See SHERNA BERGER GLUCK & DAPHNE PATAI, *WOMEN’S WORDS: THE FEMINIST PRACTICE OF ORAL HISTORY* (London, Routledge 1991); *WOMEN’S ORAL HISTORY: THE FRONTIERS READER* (Susan H. Armitage ed., Lincoln, Univ. Nebraska Press 2002).

⁴¹ INGER AGGER, *THE BLUE ROOM: TRAUMA AND TESTIMONY AMONG REFUGEE WOMEN: A PSYCHOLOGICAL EXPLORATION* (London & New Jersey, Zed Books 1992). In a different context, Herbst documented that Cambodian refugees residing in the U.S. experienced a sense of empowerment when bearing witness to the trauma they had endured. Patricia Herbst, *From Helpless Victim to Empowered Survivor: Oral History as a Treatment for Survivors of Torture*, in *REFUGEE WOMEN AND THEIR MENTAL HEALTH* 141-54 (Ellen Cole et al. eds., New York, Haworth Press 1992).

⁴² See, for example, Maria Yellow Horse Brave Heart, *Gender Differences in the Historical Trauma Response among the Lakota*, 10(4) J. HEALTH & SOC. POL’Y 1, 1-21 (1999).

history projects have emerged under the umbrella of SAHA, the South African History Archive. These projects have explicitly set out to address a perceived deficit in the work of the South African Truth and Reconciliation Commission.⁴³ SAHA's work also embraces public and intergenerational education (in particular through outreach to schools and universities).

In other contexts, the focus of related activism is more directly political and ideological. For example, the *Zochrot* project in Israel and Palestine explicitly promoted notions of accountability and restitution, including in the form of the physical return of refugees and their integration into a joint Palestinian-Jewish society and the decommissioning of "colonial concepts and practices" in Jewish Israeli society.⁴⁴ Whilst priorities and formats vary considerably, in each of the contexts surveyed it is clear that the intersection between law, politics, history, and the contested meaning of the past is at the very core of oral history work.

⁴³ Established by anti-apartheid activists in the 1980s, SAHA was closely connected in its formative years to the United Democratic Front, the Congress of South African Trade Unions and the African National Congress. It recently launched a cross-programmatic pilot project – the Right to Truth (RTT) project - designed to concentrate on the work of making the records in and about the Truth and Reconciliation Commission more readily accessible. See www.saha.org.za/ (last visited Nov. 17, 2015). As noted by Pigou and others, although populated by thousands of individual accounts, the Commission arguably generated a meta-narrative that failed to address the textured trajectory of repression and resistance through the lens of the lived community experience. See Verne Harris, *The Archival Sliver: Power, Memory, and Archives in South Africa*, 2 ARCHIVAL SCI. 63-86 (2002); Piers Pigou, *False Promises and Wasted Opportunities? Inside South Africa's Truth and Reconciliation Commission*, in COMMISSIONING THE PAST: UNDERSTANDING SOUTH AFRICA'S TRUTH AND RECONCILIATION COMMISSION 37-65 (Deborah Posel & Graeme Simpson eds., Johannesburg, Witwatersrand Univ. Press 2002). In a similar vein, the Guatemalan Recovery of the Historical Memory (REMHI) project was established in part to counter the perceived limits of the official Commission for Historical Clarification (CEH). See www.justiceinperspective.org.za (last visited Nov. 17, 2015).

⁴⁴ See www.zochrot.org (last visited Nov. 17, 2015). For a review of memory work on Nakba see AHMAD H. SA'DI & LILA ABU-LUGHOD, *PALESTINE, 1948, AND THE CLAIMS OF MEMORY* (New York, Columbia Univ. Press 2007). For a critical evaluation of the "co-memoration" of the Palestinian Nakba by Israeli Jews and in particular the notion that the work of Zochrot serves to perpetuate rather than contest the colonization of Palestine, see RONIT LENTIN, *CO-MEMORY AND MELANCHOLIA: ISRAELIS MEMORIALISING THE PALESTINIAN NAKBA* (Manchester, Manchester Univ. Press 2010).

Oral History and the Northern Ireland Transition

Post-conflict oral history work in Northern Ireland has been fueled by many of the same impulses: to give voice to the powerless; provide a counterbalance to official narratives; offer some form of redress for victims and survivors; underscore advocacy and community action; and share lessons with other societies. In many ways, work in Northern Ireland has assumed added significance, as, unlike several of the contexts discussed above, the conflict did not result in clear winners and losers. In addition, as has been well documented, there has to date been a piecemeal approach to dealing with the past in this jurisdiction.⁴⁵ A number of “top-down” criminal justice driven mechanisms—inquests, police-led historical investigations, independent investigations by the Office of the Police Ombudsman, individual public inquiries, the case-load of the Criminal Case Review Commission, civil actions, and other such measures—have borne the brunt of past-related work. A lack of consensus on the causes and *ergo* the appropriate mechanisms for dealing with the past has, to date, precluded the establishment of comprehensive and over-arching transitional justice mechanisms. On the world stage the Northern Ireland peace process is celebrated as an outstanding success, but in reality the transition has been uneasy and unpredictable, and remains highly contested.⁴⁶

⁴⁵ See Christine Bell, *Dealing with the Past in Northern Ireland*, 26 FORDHAM INT’L L.J. 1095 (2002).

⁴⁶ Kieran McEvoy, *Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland*, Healing Through Remembering (Belfast, November 2013). As noted by Patricia Lundy and Mark McGovern, the success of the Good Friday Agreement (signed in April 1998) hinged in many ways on avoiding “dealing with the past”. Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35(2) J.L. & Soc’y 265, 285 (2008).

Rather than functioning at a tangent to formal truth and information recovery initiatives, academic and community oral history and “storytelling” projects in Northern Ireland have provided an important alternative for victims and survivors.⁴⁷ The WAVE Trauma victims group, for example, has developed a range of “storytelling” projects to capture the experience of the bereaved and the injured.⁴⁸ Other projects have concentrated on the experience of specific communities, particularly those most affected by the conflict.⁴⁹ Former combatants, in particular republican ex-prisoners, have worked collectively to coordinate the story of their prison experience and to link this to outreach, reconciliation, and support work.⁵⁰ In view of the participatory nature of the method, it is not surprising that a number of academic-led oral history projects have been predicated on community engagement and cooperation.⁵¹

⁴⁷ Theorists and practitioners of conflict transformation have long since recognized “storytelling” as an effective tool for dealing with the past. See, for example, Jessica Senehi, *Constructive Storytelling: A Peace Process*, 9(2) PEACE & CONFLICT STUD. 41, 41-63 (2002), available at <http://nsuworks.nova.edu/pcs/vol9/iss2/3>; Senehi, J., *Building Peace: Storytelling to Transform Conflicts Constructively*, in HANDBOOK OF CONFLICT ANALYSIS AND RESOLUTION 201-15 (Dennis J. D. Sandole et al. eds., London, Routledge 2009). For an overview of the various types of post-conflict storytelling initiatives that have developed in Northern Ireland, see Grainne Kelly, “Storytelling” *Audit: An Audit of Personal Story, Narrative and Testimony Initiatives Related to the Conflict in and About Northern Ireland*, Healing Through Remembering (September 2005). For the broader transitional justice context see Colm Campbell & Fionnuala Ní Aoláin, *Local Meets Global: Transitional Justice in Northern Ireland*, 26(4) FORDHAM INT’L L.J. 871, 871-92 (2003).

⁴⁸ WAVE is a grassroots, cross-community voluntary organization created originally to support those bereaved of a spouse as a result of violence in Northern Ireland but now reaching out to a much broader spectrum. Relevant storytelling projects include: “Injured on that Day”, “Don’t You Forget About Me” and “Unheard Voices”. See www.wavetraumacentre.org.uk/about-us/wave-projects/unheard-voices (last visited Nov. 17, 2015).

⁴⁹ Notable examples include the Falls Community Council *Dúchas* project in West Belfast which was established to record the experience of the conflict in nationalist West Belfast and to thus contribute to the process of dealing with the past.

⁵⁰ An explicit aim of such storytelling work is to raise awareness about the rights and needs of ex-prisoners and to seek to ensure that they are reintegrated into society as equal members.

⁵¹ The Ardoyne Commemoration Project (ACP), for example, was based on a participatory action research model. Ardoyne is a small, Catholic, working class republican community of approximately 7,500. 99 people killed – one of the highest rates of fatalities per square mile – over ten times the conflict-related death average. See ARDOYNE COMMEMORATION PROJECT, ARDOYNE: THE UNTOLD TRUTH (Belfast, Beyond The Pale 2002).

In keeping with the international trend, some of the most powerful work has developed at the interface of oral testimony and the arts. Outputs here include “theaters of witness,” and interview-based plays and novels.⁵² These genres have arguably gathered significance in light of the body blow dealt to conventional oral history research by the Boston College Tapes project. That controversy is worth examining in more detail due to its profound implications in Ireland and beyond.

In 2010, the Boston College Tapes controversy brought the limits of the Northern Ireland transition (and the associated risks of conducting oral history interviews where prosecutions for conflict related events remain viable) to international attention.⁵³ A prominent journalist led a team, employed by Boston College, which interviewed 40 former members of republican and loyalist paramilitary organizations with the proviso that their interviews would not be made public until after their death.⁵⁴

Public attention was drawn to the archive following the publication of two of the interviews (with recently deceased interviewees) in a book and documentary, and by media coverage of an exchange with one of the interviewees. These outputs variously

⁵² The Theatre of Witness program, for example, has brought together people from diverse backgrounds to perform their life stories and thus enable audiences to bear collective witness to their suffering. Productions have embraced the spoken word, music, movement and cinematic imagery and have been performed in prisons, theatres, schools, and community centers, and at conferences. See www.theatreofwitness.org (last visited Nov. 17, 2015).

⁵³ See, for example, Katharine Q. Seelye, *A Heinous Crime, Secret Histories and a Sinn Féin Leader's Arrest*, NEW YORK TIMES, 1 May 2014. For an analysis of the jurisprudential background and litigation, see Will Havemann, *Privilege and the Belfast Project*, 65 STAN. L. REV. ONLINE 79, 79-85 (2010).

⁵⁴ The confidentiality agreement stated : “Access to the tapes and transcripts shall be restricted until after my death except in those cases where I have provided prior written approval for their use following consultation with the Burns Librarian, Boston College. Due to the sensitivity of content, the ultimate power of release shall rest with me. After my death the Burns Library of Boston College may exercise such power exclusively.” See affidavit of Anthony McIntyre at: www.bostoncollegesubpoena.wordpress.com/exhibits/affidavit-of-anthony-mcintyre (last visited Nov. 17, 2015).

suggested that the tapes contained information about some of the most heinous crimes committed during the Northern Ireland conflict.⁵⁵ The British government (on behalf of the Police Service of Northern Ireland) subsequently contacted the US Department of Justice requesting (under the terms of the US-UK Mutual Legal Assistance Treaty) to subpoena “any and all interviews” containing information about the murder of Jean McConville—a mother of ten children who had been killed and disappeared by the IRA.⁵⁶ In December 2011, Judge William Young ruled against both Boston College and the project researchers, and ordered that the relevant material be handed over. On appeal, the First Circuit upheld this decision in July 2012.⁵⁷

This overruling of the assurances of confidentiality given to interviewees provoked intense controversy. Consequent to the handing over of the tapes to the Police Service of Northern Ireland, a number of high-profile political activists were arrested including senior loyalists and the President of Sinn Féin, Gerry Adams (subsequently released without charge). One of the interviewers also allegedly became the victim of hate crime and subsequently feared for his life.⁵⁸ Much of the legal wrangling focused on the nature of the confidentiality agreement offered to interviewees and the manner in which this was interpreted by Boston College’s Burns library (the legal guardian of the

⁵⁵ See ED MOLONEY, *VOICES FROM THE GRAVE: TWO MEN’S WAR IN IRELAND*, (London, Faber & Faber 2010); Allison Morris, *Dolours Price’s Trauma Over IRA Disappeared*, THE IRISH NEWS, Feb. 18, 2010; Ciaran Barnes, *Gerry Adams and “Arrest”*, SUNDAY LIFE, Feb. 21, 2010.

⁵⁶ Accused by the Provisional IRA of passing information to British forces, Jean McConville was kidnapped, shot dead, and secretly buried in County Louth in the Republic of Ireland in December 1972.

⁵⁷ See McEvoy, K., *Dealing with the Past? An Overview of Legal and Political Approaches Relating to the Conflict in and about Northern Ireland*, Healing Through Remembering 56-58 (Belfast, November 2013).

⁵⁸ In October 2012 Anthony McIntyre filed for a Judicial Review, claiming that his right to life was at risk as a result of the release of the interviews. The claim was rejected. Further claims of hate crimes were alleged in the aftermath of the arrest of Gerry Adams. See Henry McDonald, *Hate Campaign Against me has Ratcheted up Since Adams Arrest, says IRA Historian*, THE OBSERVER, May 3, 2014.

archive). The latter claimed that their obligation to defend the confidentiality of the material was limited to “the extent American law allows.” The donor agreement that interviewees signed, however, stated that power of release rested with the interviewee until their death.⁵⁹ In effect the researchers gave guarantees of confidentiality to interviewees that, when tested in the courts, were deemed legally unsustainable.

This high profile and ongoing debacle has undoubtedly generated a “chill factor” but, like the past it seeks to document and explain, oral history has not gone away. Much valuable work has persisted under the radar, albeit with a heightened sense of legal and ethical issues arising.⁶⁰ Having provided an overview of the dominant themes in post-conflict oral history work in the jurisdiction, it is necessary briefly to draw out some of the ways in which interviews are deployed across the transitional justice spectrum.

The Interview in Transitional Justice

As noted at the outset, the interview is at the heart of most transitional justice processes. Truth recovery mechanisms such as truth commissions typically involve preparatory interviews to raise awareness, test interest and encourage participation, as well as formal testimony gathering (whether as part of an amnesty or limited immunity process,

⁵⁹ Chief Judge Lynch noted that the consent agreement signed between then-interviewees and Moloney and McIntyre did not include the wording “to the extent American law allows” – a proviso that was included in the deposit agreement between Moloney and Boston College. *See In re Request from United Kingdom Pursuant to Treaty*, Case No. 11-2511, 685 F.3d 1, 8 (1st Cir. 2012). *See further* Ted Palys & John Lowman, *Defending Research Confidentiality: “To the Extent the Law Allows”: Lessons From the Boston College Subpoenas*, 10(4) J. ACAD. ETHICS 271, 271-97 (December 2012).

⁶⁰ As detailed below, the Stormont House Agreement (signed by the five main political parties in Northern Ireland and the British and Irish governments in December 2014) provides for an Oral History Archive, as part of a package of measures to “Deal with the Past”.

or simply to document and “give voice” to the scale and nature of past abuses).⁶¹ Other models of transitional justice may not forefront the interview so demonstrably, but it is nonetheless an essential element.

Whether conducted on the street corner, in custody, or in court, interviews with witnesses, suspects, and experts are of course a cornerstone of the criminal prosecution process. Aspects of institutional reform, in particular the process of vetting, are also frequently informed by interviews with either victims of corruption or individuals seeking to clear their name. Whether semi-structured or structured, interviews are routinely employed to evaluate justice reform and rule of law programs in transitional contexts and in particular to establish whether they have successfully met their stated objectives.⁶² In the context of political negotiations, interviews with elite actors have generated data on the strengths and weaknesses of various models of negotiation and have thus extracted lessons for others embarking on similar post-conflict initiatives.⁶³ Interviews are central to the process of defining and apportioning reparations—helping

⁶¹ Freeman identifies five possible components of a truth commission’s mandate: the taking of statements, the use of subpoenas, the exercise of powers of search and seizure, the holding of victim-centered public hearings, and the publication of findings of individual responsibility in a final report (sometimes called the issue of “naming names”). MARK FREEMAN, *TRUTH COMMISSIONS AND PROCEDURAL FAIRNESS* (Cambridge, Cambridge Univ. Press 2006). Although public hearings tend to attract most public attention, these generally represent a mere fraction of the total number of interviews conducted. In the case of the South African Truth and Reconciliation Commission, for example, the Committee on Human Rights Violations took the testimony of over 21,000 victims but only 2,000 of these gave testimony at the public hearings. See www.law.cornell.edu/wex/south_african_truth_commission (last visited Nov. 17, 2015).

⁶² The Hague Institute for the Internationalisation of Law has also extensively employed bottom-up survey research to measure people’s perspectives on the costs, processes and outcomes of existing paths to justice and to establish whether legislation, adjudication, and informal dispute resolution processes actually produce fair outcomes and procedural justice. See www.hiil.org/audiences/justice-needs-satisfaction-tool.

⁶³ The Sudan Experience Project Oral History Library, for example, contains the transcripts of nearly one hundred interviews with those who negotiated the North-South Comprehensive Peace Agreement. See www.usip.org/publications/oral-histories-the-sudan-experience-project (last visited Nov. 17, 2015). Inspired by a similar desire, an oral history project based at University College Dublin set out to learn from the experience of state actors who were central to the negotiation of the Irish peace process. See John Coakley & Jennifer Todd, *Breaking Patterns of Conflict in Northern Ireland: New Perspectives*, 29(1) IRISH POL. STUD. 1, 1-14 (2014).

to probe both the practicalities of who, what, when and how much, as well as wider questions concerning the wants and needs of victims.⁶⁴ Finally, of course, interviews remain the most used technique in empirical based transitional justice scholarship.

Transitional Justice: Towards a “Victim-Centered” Approach

Almost a decade ago, McEvoy and McGregor published *Transitional Justice From Below*; the book was borne of a growing disquiet within the field about the extent to which existing mechanisms were by their nature “top-down” or “state-centric.”⁶⁵ In particular, it was suggested that inadequate consultation had resulted in remedies and approaches that were not necessarily relevant to the lived experience of victims.⁶⁶ Echoing wider debates within criminology and other disciplines, it has also been noted that inadequate attention to local nuances and to the specific experiences of groups such

⁶⁴ Methodologies here frequently combine victim surveys together with focus groups and semi-structured interviews as a means of exploring victimhood and social reconstruction. The Iraqi Voices: Attitudes Toward Transitional Justice and Social Reconstruction project, for example, employed semi-structured questionnaires and focus group discussions with key respondent interviews to gauge attitudes towards transitional justice in the months falling the fall of Baghdad. INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE & HUMAN RIGHTS CENTER, IRAQI VOICES: ATTITUDES TOWARD TRANSITIONAL JUSTICE AND SOCIAL RECONSTRUCTION (May 2004). In addition to single-case or small –N studies, attempts have been made to collect cross-national comparative data on both attitudes towards and the efficacy of transitional justice mechanisms. See TRICIA D. OLSEN, LEIGH A. PAYNE, & ANDREW G. REITER, TRANSITIONAL JUSTICE IN BALANCE: COMPARING PROCESSES, WEIGHING EFFICACY (Washington, USIP Press 2010); Oskar N.T. Thoms, James Ron, & Roland Paris, *State-Level Effects of Transitional Justice: What Do We Know?*, 4 INT’L J. TRANS. JUST. 329, 329-54 (2010). Attempts have been made, as well, to introduce a longitudinal dimension to such research. See David Backer, *Watching a Bargain Unravel? A Panel Study of Victims’ Attitudes About Transitional Justice in Cape Town, South Africa*, 4(3) INT’L J. TRANS. JUST. 443, 443-456 (2010).

⁶⁵ See MCEVOY, K. & MCGREGOR, L., TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE (Oxford, Hart Publishing 2008). For further exploration of the notion of transitional justice “from below”, see Patricia Lundy & Mark McGovern, *Whose Justice? Rethinking Transitional Justice From the Bottom Up*, 35(2) J.L. & SOC’Y 265, 265-92 (2008). For the international law context see BALAKRISHNAN RAJAGOPAL, INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE (Cambridge, Cambridge Univ. Press 2003).

⁶⁶ In the case of South Africa, Brandon Hamber has convincingly argued that the needs of victims who appeared before the South African Truth and Reconciliation Commission were all too easily cloaked and eclipsed in the rhetoric of political compromise. Brandon Hamber, *Rights and Reasons: Challenges for Truth Recovery in South Africa and Northern Ireland*, 26(4) FORDHAM INT’L L.J. 1074, 1083 (2003).

as women, the elderly, the young, and the disabled can give rise to considerable and costly distortions.⁶⁷ Whole categories of victims can, for example, effectively be silenced whilst those in positions of power and influence appropriate their voice(s) in pursuit of political and other agendas.⁶⁸ By failing to wrestle with pre-existing paradigms it has furthermore been suggested that prescribed solutions are often essentially “part of the problem.”⁶⁹

The notion that transitional justice *should* be “victim-centered” is now something of a given—with much discussion on the theme across the academic literature on international criminal justice and tribunals, reparations and truth recovery programs.⁷⁰ But in spite of some significant improvements, many of the fundamental challenges remain. Scholars have drawn attention to issues such as inadequate consultation at the design stage, institutional flaws relating to the role assigned to victims in trial and

⁶⁷ See, for example, DEBORAH SPUNGEN, *HOMICIDE: THE HIDDEN VICTIMS: A GUIDE FOR PROFESSIONALS* (London, Sage 1997). Concerns regarding the documentation of crime, of course, find parallels in the critique of victimology more generally. Among the most common criticisms of crime surveys, for example, is that they do not engage a sufficiently wide range of victim groups, that they do not adequately cater for victims of domestic and sexual violence, that there is as yet a disproportionate emphasis on the “ideal” victim, with attendant deficits of emphasis on, for example, state-sponsored aggression and white collar crime, and that secondary and tertiary victims are not adequately represented.

⁶⁸ John D. Brewer & Bernadette C. Hayes, *Victims as Moral Beacons: Victims and Perpetrators in Northern Ireland*, 6(1) CONTEMP. SOC. SCI. J. ACAD. SOC. SCI. 73, 76-77 (2011); Jelena Obradović-Wochnik, *The “Silent Dilemma” of Transitional Justice: Silencing and Coming to Terms with the Past in Serbia*, 7(2) INT’L J. TRANS. JUST. 328, 334-337 (2013).

⁶⁹ This point has been made most forcefully in the context of gender. See, for example, Fionnuala Ní Aoláin, *Advancing Feminist Positioning in the Field of Transitional Justice*, 6(2) INT’L J. TRANS. JUST. 1, 1-24 (2013).

⁷⁰ In his first report as UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (TJRNR), Pablo de Greiff suggests that “meaningful participation” of victims is essential to the goals of providing recognition to victims, fostering trust and strengthening the democratic rule of law. U.N. Hum. Rts. Council [HRCouncil], Promotion and protection of all human rights, political, economic, social, and cultural rights, including the right to development, *Report of the Special Rapporteur on Promotion of Truth, Justice, Reparation, and Guarantees of Non-Recurrence*, U.N. Doc. A/HRC/21/46 (Aug. 9, 2012) (prepared by Pablo de Greiff). He furthermore suggested that “none of the proclaimed goals can happen effectively with victims as the key without their meaningful participation”. See *id.*, ¶¶ 54-57, U.N. Doc. A/HRC/21/46, available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-46_en.pdf (last visited Nov. 17, 2015).

information recovery processes, the adversarial nature of trials, the lack of imagination in drawing out patterns and themes relevant to documenting the past, and the inequities of existing models of reparation.⁷¹ In the following section I will hone in on the specific challenges associated with capturing the voice of victims, highlighting the interrelated dangers of misappropriation, manipulation, and immobilization, and relating these to the limits and constraints of legal mechanisms and the failure to manage expectations.

Misappropriating and Manipulating Victim Voice

Regardless of which “victim-centered” objective is being served, the crucial starting point is deciding who counts as a victim. In post-conflict settings this is almost invariably politically contested, with respective versions of victimhood feeding on well-rehearsed accounts of the past. In this process, what Mazzei describes as “the voices in the cracks” are all too easily collapsed or silenced as new “authentic” narratives supplant existing versions.⁷² This can lead ultimately to versions of “repressed victimhood” and self-perpetuating cycles of “cultural amnesia.”⁷³ As

⁷¹ McEvoy and McConnachie argue that part of the rationale for “victim-centered” transitional justice can be found in the “language, etiquette and rituals of self-legitimation” discussed by Rodney Barker in *LEGITIMATING IDENTITIES: THE SELF-PRESENTATIONS OF RULERS AND SUBJECTS* 6 (Cambridge, Cambridge Univ. Press 2001). For an overview of this argument and the relevant literature concerning victim-related issues, see Kieran McEvoy & Kirsten McConnachie, *Victims and Transitional Justice: Voice, Agency and Blame*, 22(4) SOC. & LEGAL STUD. 489, 489-513 (2013). For an analysis of the treatment of victims at the ICC, see Luke Moffett, *Elaborating Justice for Victims at the International Criminal Court: Beyond Rhetoric and the Hague*, 13(2) J. INT’L CRIM. JUST. 281, 281-311 (2015).

⁷² Lisa A. Mazzei, *An Impossibly Full Voice*, in *VOICE IN QUALITATIVE INQUIRY: CHALLENGING CONVENTIONAL, INTERPRETIVE, AND CRITICAL CONCEPTIONS IN QUALITATIVE RESEARCH* 47-48 (Alecia Y. Jackson & Lisa A. Mazzei eds., London, Routledge 2009). By way of example Brewer and Hayes suggest that “good Tutsis” may take precedence over “bad Hutus” in cognitive attempts to define victims of the Rwandan genocide. See Brewer, J.D. & Hayes, B.C., *Victims as Moral Beacons: Victims and Perpetrators in Northern Ireland*, 6(1) CONTEMP. SOC. SCI. J. ACAD. SOC. SCI. 73, 76 (2011).

⁷³ See Daniel Bar-Tal, *Collective Memory of Physical Violence: Its Contribution to the Culture of Violence*, in *THE ROLE OF MEMORY IN ETHNIC CONFLICT* (Ed Cairns & Michael D. Roe eds., Basingstoke, Palgrave Macmillan 2003). See also URVASI BUTALIA, *THE OTHER SIDE OF SILENCE: VOICES FROM THE PARTITION OF INDIA* (Durham, NC, Duke Univ. Press 2000); and JOHN D. BREWER, *PEACE PROCESSES: A SOCIOLOGICAL APPROACH* 149-53 (Cambridge, Polity Press 2010).

Brewer and Hayes note, the debate on competing categories of victims seems to shape the “moral landscape” of post-conflict societies, encapsulating the claims perpetrators make about the past and the status attached to both individual and societal suffering.⁷⁴

Fundamental political disagreement about the causes and consequences of the Northern Ireland conflict provides a particularly fertile environment for claims to speak “on behalf of victims.”⁷⁵ The definition of a victim has, for example, provoked furious and heated debate amongst opposing political parties and victims groups. For some, any hint of equivocation of “innocent” victims with “terrorists” is an affront to the suffering of the former and to be avoided as a matter of principle, even if this means denying services to “innocent” victims who are desperately in need of help.⁷⁶ Former

⁷⁴ Brewer, J.D. & Hayes, B.C., *Victims as Moral Beacons: Victims and Perpetrators in Northern Ireland*, 6(1) CONTEMP. SOC. SCI. J. ACAD. SOC. SCI. 73, 74 & 87 (2011).

⁷⁵ Some tentative responses to the needs of victims in Northern Ireland have endeavored to avoid addressing whether those guilty of perpetrating violence must, by definition, be excluded. The Good Friday Agreement, the 1998 report of the Northern Ireland Victims Commissioner, and the Victims and Survivors (Northern Ireland) Order 2006, for example, all refer to “victims of conflict”, without stipulating that the definition of a victim must exclude those guilty of perpetrating violence. Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland [“Good Friday Agreement”], Cm 4292 (Belfast, Apr. 10, 1998); Sir Kenneth Bloomfield, *We Will Remember Them: Report of the Northern Ireland Victims Commissioner*, Chapter 2, Who Are the Victims?, 14 (Apr. 1998); The Victims and Survivors (Northern Ireland) Order 2006 (S.I. 2006/2953 (N.I.17), para. 3 (Nov. 14, 2006) (defining “victim”). The Report of the Consultative Group on the Past (2009) was less equivocal, recommending equal compensation for former combatants and “innocent” victims. House of Commons, Northern Ireland Affairs Committee, *The Report of the Consultative Group on the Past in Northern Ireland*, Second Report of Session 2009-10, HC 171, paras. 55-72 (Dec. 9, 2009). This provoked outcry (amongst unionists and others), overshadowed all other elements of the report, and contributed to its subsequent rejection by the British government. More recently, in the course of the 2015 Westminster election campaign, the Democratic Unionist Party (Northern Ireland’s largest political party), included as one of its “conditions for government” (in the event of a newly elected British government seeking their support) the establishment of a new definition of a victim that would explicitly exclude former combatants. See, e.g., Gerry Moriarty, *Robinson says DUP could play “pivotal” role in next British parliament: First Minister confident that DUP will regain East Belfast seat he lost to Naomi Long*, IRISH TIMES, Apr. 21, 2014, available at <http://www.irishtimes.com/news/ireland/irish-news/robinson-says-dup-could-play-pivotal-role-in-next-british-parliament-1.2183618> (last visited Dec. 11, 2015) (reporting on the DUP’s calls for a so-called “UK-wide definition of victims which excludes perpetrators”). See also, Northern Ireland Plan, DUP, p. 9 (Mar. 28, 2015), available at http://dev.mydup.com/images/uploads/publications/DUP_NI_Plan_v_7.pdf (last visited Dec. 11, 2015).

⁷⁶ This is reflected most recently in a controversy over the apportionment of a pension to victims of conflict in Northern Ireland. See QUEEN’S UNIV. BELFAST HUM. RTS. CTR. (HRC) & ULSTER UNIV.

combatants and others meanwhile highlight the danger of creating what they consider to be a “hierarchy of victims” and point to the immunity enjoyed by perpetrators of state-sponsored violence.⁷⁷

By way of illustration, a Catholic clergyman whom I interviewed for the Northern Ireland peace process project expressed concern about the manner in which victimhood can be manipulated for political purposes:

There is always the danger of everyone saying ‘We are the victims.’ ‘No, we are more victims than you are’ ... we have got to keep challenging people to say—‘Accept responsibility for what you did. Don’t blame your actions on somebody else’. And then we can perhaps begin to process what happened in the past. Because the danger is, the stories we tell about the past are so often used to continue the present battles, rather than to resolve the past. And there are those who need to keep a bit of resentment going on in the background.⁷⁸

McEvoy and McConnachie develop this notion of “blaming” more fully, suggesting that “blamelessness” can in transitional contexts become a prerequisite for victimhood and thus encourage hierarchies between deserving and undeserving victims.⁷⁹ Fueled

TRANS. JUST. INST. (TJI), SUBMISSION ON REPARATIONS ISSUES PURSUANT TO ARTICLE 75 OF THE STATUTE, INTERNATIONAL CRIMINAL COURT (May 2015). See further Luke Moffett, *Reparations for “Guilty Victims”: Navigating Complex Identities of Victim-Perpetrators in Reparation Mechanisms*, 10(1) INT’L J. TRANS. JUST. 146-167 (2016).

⁷⁷ See COMM. ADMIN. JUST. (CAJ) & QUEEN’S UNIV. BELFAST, THE APPARATUS OF IMPUNITY? HUMAN RIGHTS VIOLATIONS AND THE NORTHERN IRELAND CONFLICT: A NARRATIVE OF OFFICIAL LIMITATIONS ON POST-AGREEMENT INVESTIGATIVE MECHANISMS (January 2015).

⁷⁸ Personal interview with Bishop Dónal McKeown, Belfast, Northern Ireland, 14 April 2006.

⁷⁹ For an exploration of the literature on blaming as it relates to transitional justice, see McEvoy, K. & McConnachie, K., *Victims and Transitional Justice: Voice, Agency and Blame*, 22(4) SOC. & LEGAL STUD. 489, 501-04 (2013).

by political exigencies these hierarchies tend to morph with ease into opposing victims groups.⁸⁰ Once “isolated and aggregated,” “split and lumped,” the deserving category can then, as Osiel illustrates in the context of legal responses to atrocity, find expression (and variable resolution) in international criminal law, civil compensation, counter-terrorism, and the assignment of state responsibility for human rights abuses.⁸¹

Immobilizing Victim Voice

A related danger posed by the instrumentalization of victims is that particular victim narratives and indeed “personalities” begin to ossify.⁸² A victims’ counselor I interviewed in Northern Ireland, for example, expressed a sense of frustration at the manner in which some victims (fueled by the media and others) have become encapsulated by a particular version of their “story”:

One woman comes to mind who has told her story for years—to the point where I could tell it word for word—with the same emotion she did—and apart from the voice, you wouldn’t know the difference. And she finds it hard to let go of that story or to really enter into the story. But she has found an identity that she never had ... she has become a personality. And if you look around you can see victim personalities.⁸³

⁸⁰ Tshepo Madlingozi, *Good victim, bad victim: Apartheid’s beneficiaries, victims and the struggle for social justice*, in *LAW, MEMORY, AND THE LEGACY OF APARTHEID: TEN YEARS AFTER AZAPO V. PRESIDENT OF SOUTH AFRICA* 107-26 (Wessel le Roux & Karin van Marle eds., Pretoria, Pretoria Univ. Law Press 2007); Diana Meyers, *Two victim paradigms and the problem of “impure” victims*, 2(2) *HUMAN.: INT’L J. HUM. RTS., HUM., & DEV.* 255, 255-75 (2011).

⁸¹ Mark Osiel, *Who Are Atrocity’s “Real” Perpetrators, Who Its “True” Victims and Beneficiaries?*, 28(3) *ETHICS & INT’L AFF.* 281, 281-97 (2014).

⁸² See Daniel Bar-Tal, Neta Oren, & Rafi Nets-Zehngut, *Sociopsychological Analysis of Conflict-Supporting Narratives: A General Framework*, 51(5) *J. PEACE RES.* 662, 662-75 (2014).

⁸³ Personal interview with victims counsellor, Belfast, Northern Ireland, 4 June 2013.

Alan McBride, whose wife was killed in the 1993 “Shankill bomb” in Belfast, likewise notes how easily narratives and associated “identities” can crystalize:

My story used to start with the day of the bomb as if that was all there was to tell. I think this can be negative as sometimes you can get stuck in your story from the point of view that the trauma defines who you are ... the danger for me is that the more used you get to telling your story the more people come and ask you for it—and the more it becomes you—I become ‘the Shankill bomb widower’.⁸⁴

The “freezing” of identity described by McBride runs the further risk of denying individuals the opportunity to take ownership of their rights and needs and thus perpetuating their victim status.⁸⁵ This is fundamentally tied to the issue of power relations between the interviewer and the interviewee. Drawing on his experiences in South Africa, Madlingozi offers a robust critique of the inherent imbalance in many “victim-centered” initiatives, and he questions whether the transitional justice expert can *ever* exercise “responsibility” with respect to the victim’s story:

The transitional justice entrepreneur gets to be the speaker or representative on behalf of victims, not because the latter invited and gave her a mandate

⁸⁴ Correspondence with author, 29 June 2015. On 23 October 1993, an IRA bomb exploded in a fish shop beneath an Ulster Defence Association office on the Shankill Road in Belfast. Alan McBride’s twenty-nine year old wife, Sharon, was one of eight civilians killed in the attack.

⁸⁵ Similar notes of caution have been sounded with respect to international law and human rights. For a critique of twentieth-century international law from the perspective of historical patterns of Third World resistance movements see RAJAGOPAL, B., *INTERNATIONAL LAW FROM BELOW: DEVELOPMENT, SOCIAL MOVEMENTS, AND THIRD WORLD RESISTANCE* (Cambridge, Cambridge Univ. Press 2003); for an analysis of the “chastening and disenchantment” of human rights work since the 1980s see David Kennedy, *The International Human Rights Regime: Part of the Problem?, in EXAMINING CRITICAL PERSPECTIVES ON HUMAN RIGHTS* 19-34 (Rob Dickinson et al. eds., Cambridge, Cambridge Univ. Press 2013).

but because the entrepreneur sought the victims out, categorized her, defined her, theorized her, packaged her, and disseminated her on the world stage. Having ‘mined’ the story in order to use it in the First World—a practice others aptly refer to as cultural imperialism—the entrepreneur reinforces her status as the authoritative knower who is ordained to teach, civilize and rescue the benighted, hapless, victim.⁸⁶

Whilst undoubtedly pointed, Madlingozi’s critique is a useful reminder that ill-designed “solutions” are not cost-neutral; rather they can breed cynicism, resentment and a corrosive sense of exploitation.

We have thus far focused on the role of vested interests (including politicians, the media, and transitional justice scholars) in instrumentalizing victim voice. As noted above, transitional justice mechanisms are by definition a “creature of law,” and as such the pursuit of victim voice is inevitably shaped by legal considerations. In the next section we thus consider the limits and constraints of interviewing victims in legal settings.

The Limits of Law and Lawyers

Victimologists from both a criminological and socio-legal perspective have done much in recent years to probe the cultural, structural, and social factors that underpin the notion and treatment of “the victim” in settled democracies.⁸⁷ Within transitional

⁸⁶ Madlingozi, T., *On Transitional Justice Entrepreneurs and the Production of Victims*, 2(2) J. HUM. RTS. PRAC. 208, 210 (2010).

⁸⁷ For an excellent overview of recent developments within criminology, including the corresponding reflections in crime policy, see Ross McGarry & Sandra Walklate, *Exploring the*

justice, parallel lines of inquiry have explored overlapping notions of “silent” victims, “imagined” victims, “idealized” victims, and “instrumentalized” victims.⁸⁸ In practice, paraphrasing Nils Christie, the appropriation of voice is to some extent an axiomatic feature of the criminal justice system, and in retributive settings such as national and international courts, the problems associated with ethical representation of victims are thrown into sharp relief.⁸⁹ This danger has been abundantly clear in the course of our recent international research on the role of lawyers in transitional justice.

At the extreme end of appropriation, we recorded instances of victims allegedly being rounded up and induced to recite statements that best serve an investigator’s needs. For example, a former Extraordinary Chambers in the Courts of Cambodia (ECCC) defense lawyer whom we interviewed in Cambodia recalled:

We found by serendipity that—one witness when he was out in the field with the investigators—for whatever reason—they wrote out the questions and answers, the translators read the questions, and the witness read the answer.⁹⁰

Concept of Victim, Ch. 1 in Ross McGarry & Sandra Walklate, *VICTIMS, TRAUMA, TESTIMONY AND JUSTICE* 7-31 (Routledge, London 2015).

⁸⁸ See Robert Meister, *Human Rights and the Politics of Victimhood*, 16(2) *ETHICS & INT’L AFF.* 91, 91-108 (2002); Tristan Anne Borer, *A Taxonomy of Victims and Perpetrators: Human Rights and Reconciliation in South Africa*, 25(4) *HUM. RTS. Q.* 1088, 1088-1116 (2003); ERICA BOURIS, *COMPLEX POLITICAL VICTIMS* (Bloomfield, Kumarian Press 2007).

⁸⁹ Christie contends that “[l]awyers are particularly good at stealing conflicts. They are trained for it. They are trained to prevent and solve conflicts. They are socialized into a sub-culture with a surprisingly high agreement concerning interpretations of norms, and regarding what sort of information can be accepted as relevant in each case.” Nils Christie, *Conflicts as Property*, 17(1) *BRIT. J. CRIMINOLOGY* 1, 4 (1977). For the international criminal law context see Jonathan Doak, *Therapeutic dimension of transitional justice: Emotional repair and victim satisfaction in International Trials and Truth Commissions*, 11(2) *INT’L CRIM. L. REV.* 263, 263-98 (2011).

⁹⁰ Interview with ECCC Defense Lawyer at his office in Phnom Penh, Cambodia (Mar. 12, 2014).

Other international lawyers drew attention to the fact that the “Statement of Suffering” read out by victims during legal proceedings at the ECCC was often mediated and filtered by lawyers:

If you were representing an ethnic group then you have to talk about the specific ways in which that group was targeted, so you could tell sometimes that the statement isn’t just their suffering but they’ve been coached to refer to certain things because they only have twenty minutes to speak.⁹¹

This interviewee also highlighted the fact that lawyers seeking evidence to fit a particular case sometimes scavenged victims’ testimony:

I felt for victims that it was quite frustrating and confusing because it seemed that the things from their story that resonated the most [were overlooked]. We even felt this as lawyers when we were reading their statements—the victims were focusing on certain events that happened, for example, horrific rapes or something, but this was totally irrelevant to what we were looking for—for example, evidence of genocide. So the victims I think were baffled sometimes.⁹²

In situations of conflict and repression it must be acknowledged that lawyers have sometimes provided the only available channel for the voice of victims. In Chile, for example, a prominent human rights activist we interviewed suggested that: “During the dictatorship the attorneys were the voice. In times of persecution and censorship, due to the clandestineness of the persecuted groups, we were to a certain extent the voice

⁹¹ Interview with international lawyer at her office in Phnom Penh, Cambodia (Mar. 14, 2014).

⁹² *Id.* See further Michelle Kelsall Staggs & Shanee Stepakoff “*When we Wanted to Talk About Rape*”: *Silencing Sexual Violence at the Special Court for Sierra Leone* 1(3) INT’L J. TRANS. JUST., 355-374 (2007).

of many family members who could not speak.”⁹³ In the course of the transition to democracy, however, he suggested that the voice of victims became excessively judicialized:

The voice of lawyers in that context it seems to me was a very loud voice, very much broadcast in the media—very important undoubtedly—but I have the impression that the voices of the family members were somewhat diminished by that excessive role in protagonism.⁹⁴

The fact that the voice of both lawyers and judges tends to be “louder” than that of victims is partly explained by the familiarity of the former with the “culture” and practices of the court, and the concurrent sense of alienation on the part of vulnerable and fearful victims.⁹⁵ Reflecting on his experience as a prosecutor at the ECCC in Cambodia, an international lawyer whom we interviewed suggested that these problems are magnified in the context of international and hybrid courts:

There's a criticism of international justice ... the so-called Spaceship Theory where the internationalized tribunal beams down from outer space and there's this, you know, huge space craft that sits on the tarmac and does weird things inside and then it just lifts off when it's finished leaving no

⁹³ Interview with Chilean human rights lawyer, Santiago, Chile (Apr. 30, 2014).

⁹⁴ *Id.*

⁹⁵ Drawing attention to the dangers of overlooking ethno-centric perspectives and practices, Alvarez notes in the context of the Balkan and Rwandan tribunals that: “international lawyers have been insufficiently attentive to the particularities of distinct atrocities and overly dismissive of the significance of ethnicity in these events. They have not paid sufficient attention to how international efforts are perceived by and affect local communities, institutions, and the national rule of law.” José E. Alvarez, *Crimes of States/Crimes of Hate: Lessons from Rwanda*, 24 YALE J. INT’L L. 365, 368 (1999).

trace behind it and people scratching their heads thinking what the hell was that all about, who were those aliens?⁹⁶

Significant improvements have been made following criticisms of the work of various international tribunals, but the legal cultures that give rise to such alienating settings are remarkably resilient.⁹⁷ And whilst the deficits of “victim-centered” justice may be most readily apparent in the outworking of hybrid international courts such as the ECCC, other mechanisms within the legal eco-system are by no means immune from criticism.

Managing Victims’ Expectations

Truth commissions are ostensibly more attuned to the needs and rights of victims than justice-facing institutions, but many of the same challenges apply. For example, Yasmin Sooka, a former Commissioner at the South African Truth and Reconciliation Commission, noted that in order to ensure that victims’ voices were not diminished, it was essential to “manage” the lawyers during the various hearings:

In my view, in a truth recovery process, you'd have no need for lawyers;
you need to treat it like you treat a commission where you're allowed to be

⁹⁶ Interview with former ECCC Defense Lawyer (Mar. 27, 2014). For the notion of international courts being akin to alien spacecraft, see TIM KELSALL, *CULTURE UNDER CROSS-EXAMINATION: INTERNATIONAL JUSTICE AND THE SPECIAL COURT FOR SIERRA LEONE 2* (Cambridge, Cambridge Univ. Press 2013).

⁹⁷ See, for example, Mark Findlay, *Activating a Victim Constituency in International Criminal Justice*, 3(2) INT'L J. TRANS. JUST. 183, 183-206 (2009); Jo-Anne Wemmers, *Where Do They Belong? Giving Victims a Place in the Criminal Justice Process*, 20(4) CRIM. L. F. 395, 395-416 (2009); Jonathan Doak, *The Therapeutic Dimension of Transitional Justice: Emotional Repair and Victim Satisfaction in International Trials and Truth Commissions*, 11(2) INT'L CRIM. L. REV. 263, 263-98 (2011); and Jonneke Koomen, *“Without These Women, the Tribunal Cannot Do Anything”: The Politics of Witness Testimony on Sexual Violence at the International Criminal Tribunal for Rwanda*, 38(2) SIGNS 253, 253-277 (2013).

there to safeguard the rights of your client but your client must speak, not you ... which is what we did with the lawyers to protect the rights of victims.⁹⁸

Another key criticism of the prototypal South African Truth and Reconciliation Commission is that it failed adequately to probe and address underlying dynamics linked to racism, gender discrimination, and socio-economic inequality.⁹⁹ A senior state lawyer whom we interviewed in Cape Town suggested that the scale of disappointment was in direct proportion to the initial elevation of expectations:

We elevated the commission itself to a particular status ... that was part of the problem. So the commission assumed for itself a status and it was in fact totally divorced from the whole process of trying to transform South African society.

Offering advice for the recently proposed information recovery body for Northern Ireland, he quipped: “Don’t call it ‘truth’ and don’t call it ‘reconciliation.’”¹⁰⁰ The failure to identify and dissect underlying dynamics relevant to the transformation of society is again related to political exigency. Probing analysis of prevailing structures and paradigms is almost by definition anti-establishment, and as such is not generally embraced by those with an eye on the next ballot. A measure of *realpolitik* is, of course,

⁹⁸ Personal interview with Yasmin Sooka, at her home in Johannesburg, South Africa, 16 August 2014.

⁹⁹ Noting that many victims felt let down by the South African Truth and Reconciliation Commission, Madlingozi notes that, “[f]or a variety of reasons, the TRC process has left a bitter taste in the mouths of Khulumani members. Khulamani members repeatedly point out that the TRC was a ‘perpetrator-friendly’ process; it betrayed victims in that the promises regarding reparations and truth recovery were never met; and they felt that they were forced to forgive perpetrators while perpetrators and beneficiaries of the apartheid system did not show any remorse.” Madlingozi, T., *On Transitional Justice Entrepreneurs and the Production of Victims*, 2(2) J. HUM. RTS. PRAC. 214-15 (2010).

¹⁰⁰ Interview with South African state lawyer at his office, Cape Town, South Africa (Aug. 11, 2014).

understandable, but what many commentators find morally reprehensible is the failure openly to acknowledge political, legal, and structural limitations and instead to issue false hope to vulnerable participants.¹⁰¹

For both retributive-facing and indeed restorative-orientated versions of transitional justice, a key outworking of instrumentalization is indeed the failure to manage the expectations of victims. For example, despite all of the expense and effort associated with the ECCC in Cambodia in the first ten years of its functioning, only three elderly Khmer Rouge leaders have been successfully prosecuted.¹⁰² Expressing his frustration with the limits of international criminal justice, a former prosecutor for the ECCC stated:

I've always said that international criminal justice is symbolic, it can never be anything other than symbolic, not that a symbol isn't powerful, but how do you sell the symbolism of five people being prosecuted to a population where tens of thousands were perpetrated without it resulting in a total

¹⁰¹ Truth and reconciliation commissions are generally lauded as a major step forward in state efforts to deal with a conflicted past but, as Hamber has argued, such mechanisms are not generally adequate in terms of addressing the complex requirements of individual psychological healing. See, for example, Brandon Hamber, *Do Sleeping Dogs Lie? The Psychological Implications of the Truth and Reconciliation Commission in South Africa*, Seminar Paper no. 5, The Centre for the Study of Violence and Reconciliation, 1995. See also Brandon Hamber & Richard Wilson, *Symbolic Closure Through Memory, Reparation and Revenge in Post-Conflict Societies*, 1(1) J. HUM. RTS. 35, 35-53 (2002).

¹⁰² Duch (Case 001) 2012 final judgment life in prison; Khieu Samphan (Case 002) 2014 trial chamber life in prison; and Nuon Chea (Case 002) 2014 trial chamber life in prison). For an assessment of the effectiveness of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), see Lilian A. Barria & Steven D. Roper, *How Effective are International Criminal Tribunals? An Analysis of the ICTY and the ICTR*, 9(3) INT'L J. HUM. RTS. 349, 349-68 (2005)-. For an assessment of a major aspect of the International Criminal Court's effectiveness see, e.g., Mariana Pena & Gaelle Carayon, *Is the ICC Making the Most of Victim Participation?*, 7 INT'L J. TRANS. JUST. 518, 518-35 (2013).

outry from the population along the lines of ‘Well, what on earth are you doing here wasting everybody's money?’¹⁰³

Speaking to the situation in his country, a Chilean judge offered a similarly bleak prognosis:

At this moment in Chile there are 1022 cases still open for these crimes. And there's more than 700 military people charged and condemned in those cases. And of those 700 only 64 of all of those 700 are in prison, serving sentences in prison. And that makes me think that in effect there is impunity in Chile.¹⁰⁴

In Northern Ireland, a major challenge for victim-centered justice is that achieving prosecutions for historical abuses is, for legal and practical reasons, extremely difficult.¹⁰⁵ Likewise, the absence of an amnesty or immunity from prosecution for conflict-related offences necessarily curtails the remit of proposed information recovery mechanisms.¹⁰⁶

Having identified three interrelated risks associated with the instrumentalization of victims in transitional justice—namely the manipulation of victim voice by vested interests, the affording of authority to particular voices and the concurrent silencing of

¹⁰³ Interview with former ECCC Defense Lawyer, 27 March 2014.

¹⁰⁴ Interview with Chilean judge in Santiago, Chile, 30 April 2015.

¹⁰⁵ In his “Longford Lecture” on 2 December 2009, Sir Hugh Order, former Chief Constable of the Police Service of Northern Ireland, set out some of the many challenges associated with the prosecution of Troubles-related crimes. He noted that many witnesses are now deceased, exhibits are likely to be contaminated or inadmissible, and forensics are incomplete (the forensic laboratory was blown up twice, as were numerous police stations).

¹⁰⁶ In the aftermath of the Boston College Tapes controversy post-conflict oral history projects are inclined to make it abundantly clear that they cannot accept information about crimes that have not been processed and duly determined by the courts of all relevant jurisdictions.

others, and the reification or “freezing” of identity—and having related these to the constraints of legal mechanisms and a wider failure to manage victims’ expectations, I will in the next section explore how a greater familiarity with oral history theory and praxis might provide a useful corrective for both practitioners and scholars of transitional justice.

Before exploring some of the key strengths of oral history it is important to set down a few parameters. It must first be acknowledged that the term “oral history” is variously defined and delineated. It is beyond the scope of this article to explore the gestation of the field, but it is important to declare my reference range.¹⁰⁷ As will be evident from my overview of international and local oral history projects, my inclination is to claim for oral history an open and inclusive space, one that is not exclusively tied to a “history from below” approach or indeed to a life narrative format.

Oral history interviews generally prioritize the contributor’s narrative and tend to be less structured than methodologies employed by social scientists and others, but this need not preclude preparation and probing. Approaches and formats can and should be adapted to suit the needs of individual interviewees and specific research objectives. They should also be tempered in light of prevailing social, political and cultural factors. For example, it should be noted that this analysis draws primarily on my experience of conducting interviews in Northern Ireland and other relatively settled transitional societies. There is a burgeoning interest and literature on the very specific challenges

¹⁰⁷ For authoritative overviews of the field, see Robert Perks & Alistair Thomson, *Part 1: Critical Developments*, in *THE ORAL HISTORY READER* (Robert Perks & Alistair Thomson eds., Routledge, London 2004), and Donald A. Ritchie, *Introduction: the Evolution of Oral History*, in *THE OXFORD HANDBOOK OF ORAL HISTORY* 3-23 (Donald A. Ritchie ed., Oxford, Oxford Univ. Press 2011).

of conducting oral history in the aftermath of mass atrocities and genocide.¹⁰⁸ The following critique resonates with “post-crisis” interviews but it does not claim to embrace the very specific methodological challenges arising therein.

Many interview-based projects—whether born in history, anthropology, social sciences, folklore, or law—embrace elements of oral history, and it is thus in many ways an intrinsically interdisciplinary field.¹⁰⁹ There are nonetheless distinctions of emphasis, style and intent; distinctions that, I shall argue below, are particularly relevant to “victim-centered” transitional justice.

Capturing the Plurality of Victim Voice

I have argued above that a foundational challenge for victim-centered transitional justice is establishing who counts as a victim, and I then considered a number of ways in which this process can be skewed and manipulated by vested interests. It is in this context that I would argue the historian’s skillset is particularly useful. Notwithstanding the diversity of contemporary socio-legal studies, it has been argued persuasively that the durability of positivistic and legalistic versions of seeing the world is a feature of many of the major legal institutions synonymous with transitional justice (for example,

¹⁰⁸ See Erin Jessee & Annie Pohlman, *Introduction – Confronting Mass Atrocities in Oral Historical Practice*, 33 ORAL HIST. F. D’HIST. ORALE 1, 1-6 (Special Issue, “Confronting Mass Atrocities”) (2013). See also the work of Henry Greenspan, Luisa Passerini and Alessandro Portelli on oral history practice related to the Holocaust and other mass atrocities in Nazi-occupied Europe, and that of Donald R. and Lorna Touryan Miller and Leyla Neyzi in relation to the Armenian genocide. For an overview of the impact on traumatic experiences on memory, see SELMA LEYDESDORFF, *TRAUMA: LIFE STORIES OF SURVIVORS* (New York, Routledge 1999), and Sean Field, *Beyond “Healing”: Trauma, Oral History and Regeneration*, 34(1) ORAL HIST. 31, 31-42 (2006).

¹⁰⁹ See ORAL HISTORY: AN INTERDISCIPLINARY ANTHOLOGY (David K. Dunaway & Willa K. Baum, eds., Nashville, American Association for State and Local History Book Series 1984).

the ICTY, ICTR, and ICC).¹¹⁰ While there are traces of such a worldview in historical studies (most notably during the “empirical” or “scientific” turn of the nineteenth century), for the most part the historian’s impulses are pluralistic and interpretative, both in terms of methods and determinations.

Historians are inclined, for example, to examine societal and cultural contexts as a matter of course whereas courts, particularly in the messy contexts of transitional societies, are often concerned not to allow the exceptional or the local to undermine the broader requirements of the international legal order.¹¹¹ In contrast to what Walter Benjamin described as the “open sky of history,” legal judgments in such contexts often aspire to a mode of finality and a host of legal doctrines have been designed precisely to act as a brake on legal lines of argumentation, which seek to privilege local exigencies over international law.¹¹² In this process the voice of victims is all too easily diminished. Alternatively I would argue that, within the broad canon of history, the method of oral history is particularly well suited to capturing the plurality of victims’ experiences. As Thompson states:

Reality is complex and many-sided; and it is a primary merit of oral history that, to a much greater extent than most sources, it allows the original multiplicity of standpoints to be recreated.

¹¹⁰ McEvoy, K., *Beyond Legalism: Towards a Thicker Understanding of Transitional Justice*, 34(4) J. L. & SOC’Y 411, 411-40 (2007); Jonathan Doak, *Enriching Trial Justice for Crime Victims in Common Law Systems: Lessons from Transitional Environments*, 21(2) INT’L REV. VICTIMOLOGY 139, 139-60 (2015).

¹¹¹ See WILSON, R.A., *WRITING HISTORY IN INTERNATIONAL CRIMINAL TRIALS* 6-9 (Cambridge, Cambridge Univ. Press 2011),

¹¹² See Osiel, M.J., *Constructing Memory with Legal Blueprints*, in *THE HOLOCAUST’S GHOST: WRITINGS ON ART, POLITICS, LAW, AND EDUCATION* 413-14 (F. C. Decoste & Bernard Schwartz eds., Edmonton, Alberta, Univ. of Alberta Press 2000). See also *LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE* (Rosalind Shaw, Lars Waldorf, & Pierre Hazan eds., Stanford, Stanford Univ. Press 2010).

Thompson goes on to argue that the growing popularity of oral history in the 1960s and 70s and the associated renewal of contacts with scholars in cognate disciplines was part of a fundamental reassessment of the social role of the historian. By drawing historians out of the “ivory tower” and into direct confrontation with uncomfortable and sometimes disturbing social and political realities, he contends that a new generation of historians was forced to reassess the “messiness” of “awkwardly individual lives.” This in turn invigorated scholarly analysis of the complex web of mediators between the individual and prevailing socio-economic systems.¹¹³

Such analysis demands that we sidestep what McEvoy and McConnachie have described as “monochromatic” distinctions between victims and perpetrators and instead begin by critically questioning pre-ordained categorizations.¹¹⁴ For example, when designing a framework for interviews on the Northern Ireland peace process project described above, we were determined to get beyond established political categories. Instead we tried to approach themes for investigation with imagination and creativity, taking care to wrestle with complex and contested terms such as conflict, reconciliation, and victimhood.

On the basis of widespread consultation with key stakeholders in Ireland, North and South, and in Britain, we acknowledged that the process of peace-making was never confined to political or legal negotiations, but rather it spanned the entire spectrum of civic, religious, and community life. Following this logic, our interviews with victims

¹¹³ For an insightful review of the wider implications of Thompson’s text, see Bill Williams, *The Jewish Immigrant in Manchester*, 7(1) ORAL HIST. 63, 63-65 (Spring 1979).

¹¹⁴ McEvoy, K. & McConnachie, K., *Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy*, 9(5) EUR. J. CRIM. 534, 534 (2012).

were not confined to dedicated support groups. Instead, they straddled the full range of interview categories. The complete archive of one hundred interviews thus collectively and self-consciously juxtaposes the perspectives of politicians, senior negotiators, lawyers and interlocutors with those of a wide range of victims and survivors, including the bereaved and the maimed, homemakers, funeral directors, fire and rescue personnel, gay activists, pastors, health professionals and mere onlookers.¹¹⁵

Another core strength of the oral history method is that, having identified gaps, investigators can actively seek out and capture “hard to reach” voices and perspectives, including those who do not have the resources or inclination to organize collectively. Some individuals are immediately grateful for the opportunity to share their experiences of past suffering and conflict. Others are persuaded by the argument that if they do not tell their story and the story of their community, someone else will. Still more, with an eye to posterity, want to ensure that their children and grandchildren understand what they lived through. But my experience was that, even in a heavily researched context like Northern Ireland, some voices have not yet been heard. Indeed many victims endure the additional pain of being overlooked or deliberately ignored.

Identifying and accessing these “silent” voices cannot be left to chance. Oral historians have long drawn attention to the dangers of a lazy reliance on self-selection: this process tends to attract what Thompson refers to as the “central groups” in society—those from a skilled working-class or lower middle-class background.¹¹⁶ In post-conflict societies

¹¹⁵ See further, Anna Bryson, *The Interview: A Tool for Peace Building? Reflections on the Peace Process: Layers of Meaning Project*, 9 J. CROSS BORDER STUD. IRELAND 79, 79-90 (2014).

¹¹⁶ See Paul Thompson, *The Voice of the Past: Oral History*, in THE ORAL HISTORY READER 26 (Alistair Thomson and Robert Perks eds., London & New York, Routledge 1988). This is particularly problematic in places like Northern Ireland where a natural impulse and talent for storytelling has been ingrained and thwarted by the realities of conflict.

the risks multiply as the impulse to label and self-exclude is often a potent element. Ensuring participation from a suitably broad range of victims thus demands careful anticipation, consultation, reflection, and persuasion. However, with skill, perseverance and some good fortune, oral historians can reach beyond the “gatekeepers”¹¹⁷ and interrupt the cycle of narrative reproduction.

Of course, in practical terms it makes sense for researchers or practitioners wishing to engage with victims to work with and through established networks and “gatekeepers.”¹¹⁸ These exploratory encounters are usually critically important in terms of ascertaining sensitivities and refining ethical protocols, but the underlying risks and associated claims to representation must be acknowledged. The collectives that have crystallized are not, of course, necessarily representative and those who control them may have a vested interest in referring you to the “usual suspects”—perhaps even a pre-ordained list of individuals who have been authorized to give interviews on behalf of the organization.¹¹⁹

Navigating these risks, whilst attempting to garner confidence across opposing groups of interviewees, can present daunting challenges. In the case of my earlier research on prisoners, for example, great care was taken to identify individuals who had become

¹¹⁷ In an oral history context gatekeepers refer to those individuals who can provide (or deny) access to a particular group of interviewees. For example, this could be a key member of a victim’s organization or a representative of an ex-prisoners’ association. See further RITCHIE, D.A., *DOING ORAL HISTORY* 77 3rd ed., Oxford, Oxford Univ. Press 2015).

¹¹⁸ It must also be noted that gatekeeper organizations are often essential in terms of protecting victims. Some of the NGO representatives we spoke to in Cambodia, for example, explained that they perceived that part of their role was to act as a buffer between victims and self-serving lawyers.

¹¹⁹ Lummis argues that the issue of representation is at the heart of the debate about the value of the interview method in history and cautions that to make any generalization based on oral evidence is to suggest that the interviews are somehow typical of broader social forces. TREVOR LUMMIS, *LISTENING TO HISTORY: THE AUTHENTICITY OF ORAL EVIDENCE* 31-38 (London, Harper Collins 1987).

estranged from their host organization during or after their time in prison. This took months, if not years, to achieve as many of these individuals were no longer in touch with their erstwhile comrades, and many had moved away from Northern Ireland.

Similar challenges arise for those lawyers and transitional justice practitioners who wish to engage with a diverse range of victims. In reality, the tightly defined timeframe within which they must deliver often renders it impossible to engage in the necessary research, outreach and confidence building. However, the benefits, as I will argue below, should not be underestimated.

Gender Dimensions

Free from the pressure to identify and select evidence to support a defense, a prosecution, an amnesty, or to secure a quote that will sell tomorrow's newspaper, oral history can provide opportunities to explore what Bouris refers to as "complex political victimization." In so doing, oral history can illustrate in pointillism the broad spectrum of individual experience.¹²⁰ By thus broadening the scope of inquiry, it holds the potential to grasp the nuances of, for example, contrasting urban and rural experiences.¹²¹ It is also one of the most acutely sensitive instruments we have for capturing gender perspectives.

In the course of researching the Northern Ireland peace process, for example, we included interviews with both prominent women and the mothers, partners, sisters and

¹²⁰ ERICA BOURIS, *COMPLEX POLITICAL VICTIMS* 5 (Bloomfield, CT, Kumarian Press 2007).

¹²¹ *See, e.g.*, BRENDAN MURTAGH, *COMMUNITY AND CONFLICT IN RURAL ULSTER* (Coleraine, Univ. of Ulster 1999).

daughters of male protagonists. We also invited men and women to reflect on issues such as the impact of conflict on personal identity and family life.¹²² One former fire and rescue worker who had attended the scene of atrocities noted that throughout his career there was a “very male” approach to coping with trauma: “You told the story—and you told what happened in the story—but you never talked about the emotions. You never talked about how you felt about it.”¹²³ A former loyalist combatant also reflected on the extent to which his wife and daughters had become “silent victims” of his actions:

I owe my ex-wife and my daughters something I can never repay, because I wasn't the father I once was ... I had no interest my family ... I was just so deeply involved in what I was doing.¹²⁴

Oral history encounters can also provide important “under the radar” opportunities to document difficult and, in some contexts, taboo issues concerning domestic violence and other gender-based harms.¹²⁵ This gathers significance in light of the aforementioned shortcomings of top-down retributive and truth-telling mechanisms.¹²⁶

¹²² For an overview of the contribution of oral history to gender studies, see *THE FEMINIST PRACTICE OF ORAL HISTORY* (Sherna Berger Gluck & Daphne Patai eds., London, Routledge 1991).

¹²³ Personal Interview with former fire and rescue officer, Belfast, Northern Ireland, 11 June 2013.

¹²⁴ Personal Interview with former loyalist paramilitary, Belfast, Northern Ireland, 30 September 2011.

¹²⁵ See for example the British Library’s “Sisterhood and After: The Women’s Liberation Oral History Project” which includes the recollections of those who worked at Women’s Aid Northern Ireland. For an incisive analysis of the manner in which truth commissions can succumb to narrow categories of “acceptable” or “appropriate” victimhood for women, and in particular the tendency to prioritize public rather than private acts see Fionnuala Ní Aoláin & Catherine Turner *Gender, Truth & Transition*, 16 *UCLA WOMEN’S L. J.* 229, 265-273 (2007). See further Fiona C. Ross, *An Acknowledged Failure: Women, Voice and Violence and the South African Truth and Reconciliation Commission*, in *LOCALIZING TRANSITIONAL JUSTICE: INTERVENTIONS AND PRIORITIES AFTER MASS VIOLENCE* 69-92 (Rosalind Shaw & Lars Waldorf eds., Stanford, Stanford Univ. Press 2010).

¹²⁶ Reflecting on the particular limitations of criminal tribunals in dealing with “women’s suffering” Franke suggests that: “Law itself tends to be a particularly masculinist practice, elevating rationality and objectivity over context and nuance, preferring process to substance, master-narrative to nuance, and being generally ill suited to the kind of empathetic listening that

In Northern Ireland, for example, it has been suggested that there has been a sustained exclusion of women from “dealing with the past” initiatives, and that the gendered impact of the conflict and post-conflict legacy needs of women thus have not been adequately addressed. With specific regard to victims, the local Legacy and Gender Integration Group emphasize that “mechanisms must utilize fair procedures that respond to the diversity of victims’ individual needs, including their gender-specific needs, and avoid treating all victims as the same.”¹²⁷ In light of its profound implications for transitional justice approaches, it is worth exploring in more detail both the impulse to collectivize victimhood and the potentially “corrective” power of oral history.

Layers of Meaning

The tendency in political discourse in settled democracies to suggest that, on justice-related matters, victims have one voice flies in the face of empirical violence.¹²⁸ If anything, the reality of post-conflict and transitional victimhood is that the spectrum of

would transform the speaking self into a healing self.” Katherine M. Franke *Gendered Subjects of Transitional Justice*, 15 COLUM. J. GENDER & L., 813, 825 (2006).

¹²⁷ See LEGACY GENDER INTEGRATION GROUP, GENDER PRINCIPLES FOR DEALING WITH THE PAST at 2 (Belfast, September 2015), available at www.rwuk.org (last visited Nov. 14, 2015).

¹²⁸ Contemporary media reporting often leans towards the view that victims are axiomatically inclined to prioritize justice but evidence from criminological victim surveys tends to show that victims are not necessarily more punitive than the general public. See, for example, JOANNA MATTINSON & CATRIONA MIRRLEES-BLACK, ATTITUDES TO CRIME AND CRIMINAL JUSTICE: FINDINGS FROM THE 1998 BRITISH CRIME SURVEY (London, Home Office, 2000). See also ROBERT ELIAS, VICTIMS OF THE SYSTEM: CRIME VICTIMS AND COMPENSATION IN AMERICAN POLITICS AND CRIMINAL JUSTICE (New Brunswick, Transaction Books 1984); CHANGING ATTITUDES TO PUNISHMENT: PUBLIC OPINION, CRIME AND JUSTICE (Julian V. Roberts & Mike Hough eds., Devon, Willan Publishing 2002); and Robyn Holder, *Satisfied? Exploring Victims’ Justice Judgements*, in CRIME, VICTIMS AND POLICY: INTERNATIONAL CONTEXTS, LOCAL EXPERIENCES 184-214 (Dean Wilson & Stuart Ross eds., Basingstoke, Palgrave Macmillan 2015).

opinion is even more diverse. In my field research in Northern Ireland, it became immediately apparent that within the “victim sector” there was a diverse spectrum of opinions on the past. Most of the victims I interviewed indicated that they drew a distinction between those who were injured or maimed in the course of paramilitary activities, and those who had no political connections and were simply in the wrong place at the wrong time. But even within dedicated victims’ groups, it was clear there were a variety of perspectives on the extent to which these distinctions mattered. Under the weight of an increasingly broad spectrum of individual viewpoints and perspectives, the logic of binary distinctions eventually collapses.

Removing the label of “Victim” (with a capital “V”) from our interview categories we can also, in my experience, unfold new layers and categories of victimhood.¹²⁹ They did not necessarily self-identify as “victims” but it became increasingly clear that those individuals—whether by accident or design—who became channels for peace negotiations in Northern Ireland had paid an untold price for their efforts.

The much-heralded Derry fish shop owner, Brendan Duddy, is an obvious example. In 2008 he spoke publicly for the first time to journalist and broadcaster, Peter Taylor, about his role as the secret channel between the Provisional IRA and British Intelligence between 1973 and 1993—a back-channel which is universally acknowledged by both British and Republican political actors as absolutely crucial to

¹²⁹ Likewise one of the main effects of victim-centered research in criminology was the unmasking of a vast array of hidden victims. See Carolyn Hoyle & Lucia Zedner, *Victims, Victimization, and Criminal Justice*, in THE OXFORD HANDBOOK OF CRIMINOLOGY 487 (Mike Maguire et al. eds., 4th ed., New York, Oxford Univ. Press 2007).

the ultimate success of the peace process.¹³⁰ What struck me in talking to Brendan and his family was the unspeakable pressure of maintaining a secret life through those decades. His daughter explained that because of her father's need to maintain the trust and confidence of protagonists on all sides and the fear of drawing any attention to the family she was forced to maintain distance from her neighbors and friends. This included adopting a "neutral" political identity in a town where the vast majority of children openly associated with one "side" or the other:

We didn't bring our friends to the house after school. We went to our friends' houses. Very rarely would our friends have been in this house ... as a child, I wished I had had a side, I wouldn't have minded—my wee friends would all have pictures of Pádraig Pearse up on the walls.¹³¹

Former members of the Royal Ulster Constabulary (RUC) provided similar details on the unspeakable pressure of maintaining a secret life across several decades. They explained that due to the constant threat of attack and the associated fear of being identified and targeted by paramilitaries, uniforms could not be hung on the washing line and were instead dispatched to distant laundromats; window-cleaners and other local service providers could never be trusted; and home telephones often went unanswered. It was also apparent that it was often only after the immediate strain of conflict was removed that an individual's health was adversely affected. For some this was because a lid was put on latent tendencies; for others the adrenalin of conflict had been perversely prophylactic.¹³²

¹³⁰ See Niall Ó Dochartaigh, *Together in the Middle: Back-Channel Negotiation in the Irish Peace Process*, 48 J. PEACE RESEARCH 767, 767-80 (2011).

¹³¹ Personal Interview with Shauna Duddy, Derry, 30 August 2012. Pádraig Pearse was an Irish Republican leader, executed by the British for his part in the Easter Rising of 1916. Thereafter he became an Irish republican icon.

¹³² For those who participated in the ceasefires and peace negotiations of the mid-70s or the intense efforts to avert the hunger strikes of the early 1980s, for example, there was often a

Antifreeze

Imploding the notion of a singular victim identity can help to release some of the pressure generated by the “idealized victim.” Whilst some individuals clearly benefit from the type of victim-perpetrator encounter favored perhaps most notably by Archbishop Tutu,¹³³ there has been widespread criticism of what is perceived to be an excessive emphasis on reconciliation and, at times, an unseemly pressure on victims to forgive.¹³⁴ One of the victims I interviewed explained that, in her view, forgiveness is not something that just “happens”:

Because of my anger, I had a real problem with forgiveness, you know ...

I think the illusion is that it ‘happens’, you know—‘I forgave them’. And then the difficulty is ‘I thought I had forgiven them but now it is back’? But it is put across as something that just ‘happens’.¹³⁵

For many individuals it is also clear that victimhood is but one element of their identity. They may be victims when talking about the shot that punctured their mobility, but they are empowered when talking about other aspects of their lives including, in some cases,

delayed sense of guilt at what might have been done to save lives. See, for example, Brendan Hughes’s account of the second Irish republican hunger strike of 1981, at MOLONEY, *supra* note 158 at 249.

¹³³ Archbishop Desmond Tutu was the chairman of South Africa’s Truth and Reconciliation Commission (TRC). It was established to investigate the violations that took place between 1960 and 1994, to provide support and reparation to victims and their families, and to compile a full and objective record of the effects of apartheid on South African society. He subsequently hosted a series of encounters on BBC television in which soldiers and paramilitaries connected to the Northern Ireland conflict came face to face with the families of victims.

¹³⁴ See further Sean Field, *Disappointed Remains: Trauma, Testimony and Reconciliation in Post-Apartheid South Africa*, in *THE OXFORD HANDBOOK OF ORAL HISTORY* 142-58 (Donald A. Ritchie ed., New York, Oxford Univ. Press 2010).

¹³⁵ Personal interview with victim, Larne, Northern Ireland, 4 June 2013.

profoundly courageous peace building work. Drawing on extensive research in post-apartheid South Africa, Field suggests that creating space for victims of trauma to place their story in its wider cultural contexts (including childhood and family experiences) is critically important.¹³⁶ This resonates clearly with the experience of the Shankill bomb victim, Alan McBride, who notes that it was only by setting a broader context for his trauma that he was able gradually to get beyond it:

Whilst the trauma is part of who I am, it is just a part—there is so much more to tell. When I am telling my story these days I will start by talking about my upbringing on a Loyalist housing estate in North Belfast. I talk about my father being in the UDA [(Ulster Defence Association)] and how he believed that he was defending his community from attacks by the IRA [(Irish Republican Army)] ... at a personal level it has had a healing effect, almost therapeutic.¹³⁷

¹³⁶ Field, S., *Beyond "Healing": Trauma, Oral History and Regeneration*, 34(1) ORAL HIST. 31-42 (2006); Field, S., *Disappointed Remains: Trauma, Testimony and Reconciliation in Post-Apartheid South Africa*, in THE OXFORD HANDBOOK OF ORAL HISTORY 142-58 (Donald A. Ritchie ed., New York, Oxford Univ. Press 2010).

¹³⁷ Correspondence with Alan McBride, 29 June 2015. McBride calls attention here to the potential for "healing". I am extremely wary of overstating this dimension (our primary objective as oral historians is to collect historical narratives, not to counsel and console) but there is undoubtedly a therapeutic and potentially empowering dimension to the work. Since time immemorial storytelling has been employed as a social lubricant. Having observed the bushmen of Namibia and Botswana for decades, Wiessner calls attention to the fact that firelit conversations have for centuries evoked imaginations, healed rifts within families and communities and enlightened individuals about the cultural institutions, networks and identities of others. The embers have given way to light bulbs but something of this same spirit of humane reflection and basic social instinct underscores the oral historian's craft. Polly W. Wiessner, *Embers of Society: Firelight Talk Among the Ju/'hoansi Bushmen*, 111(39) PROC. NAT'L ACAD. SCI. 14027, 14027-35 (2014).

Affording space for awkward sub-narratives and contextual asides clearly benefits victims and acknowledges that we are all (as de Beauvoir and others have argued), at some level, in the process of *becoming*.¹³⁸

Indeed for those who have made a profound personal transition, the process of narrating the past often involves disentangling and rationalizing different versions of self. This was particularly apparent in our interviews with former supporters and agents of both apartheid in South Africa and the Ben Ali regime in Tunisia. Here we were immediately struck by the complex intersection of different versions of “self” that were embedded within individual accounts, and were reminded of the Irish poet Seamus Heaney’s reflections upon “the strain of being in two places at once, of needing to accommodate two opposing conditions of truthfulness simultaneously.”¹³⁹

Leading oral historians have indeed suggested that the revelation of such contradictions and subjectivities is one of the core strengths of the oral record. As far back as 1981 Portelli noted:

The first thing that makes oral history different ... is that it tells us less about events as such than about their meaning. This does not imply that oral history has no factual interests ... But the unique and precious element

¹³⁸ SIMONE DE BEAUVOIR, *THE SECOND SEX* (H. M. Parshely trans., Harmondsworth, Penguin 1984). More recent expositions of the mediation of “self” and “otherness” through representations of history and culture include Stuart Hall’s seminar texts on the formation of cultural identity, race and ethnicity. See, for example, Stuart Hall, *The Question of Cultural Identity*, in *MODERNITY AND ITS FUTURES* 274-316 (Stuart Hall et al. eds., Cambridge, Polity Press in Association with the Open Univ. 1992), and STUART HALL, *REPRESENTATION: CULTURAL REPRESENTATIONS AND SIGNIFYING PRACTICES* (London & Thousand Oaks, California, Sage in association with the Open Univ. 1997).

¹³⁹ SEAMUS HEANEY, *PLACE AND DISPLACEMENT: RECENT POETRY OF NORTHERN IRELAND* 4-5 (Grasmere, England, trustees of Dove Cottage 1984). For a pioneering analysis of the wider patterns of mediating conflicting war-memory and mythology, see ALISTAIR THOMSON, *ANZAC MEMORIES: LIVING WITH THE LEGEND* (2nd ed., Victoria, Monash Univ. Press 2013).

which oral sources force upon the historian and which no other sources possess in equal measure (unless it be literary ones) is the speaker's subjectivity ... They tell us not just what people did, but what they wanted to do, what they believed they were doing, what they now think they did.¹⁴⁰

Affording space for the complex, contradictory and sometimes inchoate nature of individual experience, oral history can arguably produce a "truer" and more rounded account of victims' experiences. Rather than focusing on "ideal" or "imagined" victims, it enables us to shade in the emotions that cut through facts and to point up the minutia of our humanity. For example, a former frontline services officer interviewed for the Northern Ireland peace process project noted that what lingers in his memory is not the headline horror, but rather the fragments of dignity that he clung to in times of despair:

You can never tell anybody about the horror of it, because it almost seems as if you are—there is a gratuitousness in the telling of the horror. But I mean, there was one wee policewoman and there was nothing left of her only a wee bit of her body. And when [you saw] the top of her head on a Portakabin, you just—scraped the cratur [(creature)] up on a wee piece of board. But do you know the thing that horrified you—it wasn't the blood and the guts and there was loads of that—the thing that horrified you was the things that made people human. There was a guy there and I have never seen a shinier shoe—and he had one shoe and one bare foot. And I remember when we were carrying him out—I took my helmet off and

¹⁴⁰ Alessandro Portelli, *The Peculiarities of Oral History*, 100 HIST. WORKSHOP J. 99, 99-100 (1981).

covered it up. Not that anybody was watching, but I covered up his bare foot to give him a bit of dignity, you know.¹⁴¹

Although not intended to be of literary merit, such insights and reflections resonate with some of the most powerful written accounts of mass inhumanity and genocide, including Primo Levi's exploration of the dehumanization of the Lager and Solzhenitwyn's reflections on the bridgehead between "good" and "evil" in the Gulag.¹⁴²

Providing opportunities for mature and measured reflection on the human dimensions of past-conflict, opportunities that are not tied to prosecutorial or other restorative outcomes, can usefully inform wider debates about the causes and effects of conflict. A team of international oral historians was brought together in 2012 by the Colombia Center for Oral History Research to reflect on the linguistic and dialogic strengths of oral history in post-conflict settings. They concluded that: "As oral history is attuned to the creation and transmission of meaning and memory, it evokes new ways of hearing and provides us with the potential to reimagine the future based on new understandings of the past."¹⁴³ Speaking, listening, and preserving are indeed profoundly humane

¹⁴¹ Personal interview with former fire and rescue officer, Belfast, Northern Ireland, 11 June 2013.

¹⁴² See NICHOLAS PATRUNO, *UNDERSTANDING PRIMO LEVI* (Univ. of South Carolina Press 1995); ALEXANDER SOLZHENITSYN, *THE GULAG ARCHIPELAGO, 1918-1956: AN EXPERIMENT IN LITERARY INVESTIGATION PARTS 1 AND 2* (Thomas P. Whitney trans., Harvill Press 1974).

¹⁴³ ARAS RAMAZAN ET AL., *DOCUMENTING AND INTERPRETING CONFLICT THROUGH ORAL HISTORY: A WORKING GUIDE 2* (New York, Columbia Univ. Center for Oral History in association with The American Academic Research Institute in Iraq 2013). Under the influence of European (mainly French) social theory in the 1970s, notably poststructuralism and postmodernism, a great deal of scholarship shifted away from the quest for "objectivity" and instead questioned the accepted truisms of positivist social science. Oral history provided particularly fertile ground for the exploration of form and meaning in narrative, and the questioning of the entire process by which voices and related texts are produced. Among the most notable scholars of this "interpretative" turn in oral history are Allesandro Portelli and Luisa Passerine. See, e.g., LUISA PASSERINI, *FASCISM IN POPULAR MEMORY: THE CULTURAL EXPERIENCE OF THE TURIN WORKING CLASS* (Cambridge, Cambridge Univ. Press 1987); ALLESANDRO PORTELLI, *THE DEATH OF LUIGI TRASTULLI AND OTHER STORIES: FORM AND MEANING IN ORAL HISTORY* (Albany, State Univ. of New York Press 1991).

activities: they encourage reflection, empathy and the broadening of perspectives. And in this sense, the very process of interviewing can make a subtle but important contribution to the cause of reconciliation.

Owning the Longer View

The final two issues I will address are the closely related notions of longevity and ownership. Unlike truth recovery mechanisms, which generally function for a defined period of time, oral archives are designed to last. This is significant on a number of levels. Aside from the obvious attraction of generating and preserving valuable historical evidence for future generations, focusing on the long-term value, in my experience, lends weight and substance to the interview encounter and can provide a valuable bulwark against instrumentalization.

Interviewees are generally encouraged to reflect on the value of their contribution for future generations and this alone can create an atmosphere conducive to mature and measured reflection. The longevity of archive projects also creates possibilities for revisiting and renegotiating memories over time and, furthermore, allows us to probe generational shifts. Reflecting on her experience of second-generation trauma, one woman whom I interviewed in Northern Ireland explained that whilst her youth effectively ended when her mother became victim to a bomb attack, it was only in later years that the full effect of these events became apparent:

The Troubles has paid a big effect on people and not just that generation then—it has actually passed on through our generations ... I only discovered

this quite recently because of my marriage breaking down—that you lost so much and there was so much responsibility put on you at a very young age.¹⁴⁴

This fluid dynamic within post-conflict oral history work speaks to ongoing debates concerning the theoretical foundation of transitional justice, and in particular the fundamental question as to where restorative processes begin and end for victims.¹⁴⁵

“Ultimate history we cannot have in this generation” (E.H. Carr)

At a recent roundtable with UN Special Rapporteur, Pablo de Greiff, on dealing with the past in Northern Ireland, a senior human rights professor argued that the weight of responsibility for analyzing the past cannot be borne by the current generation.¹⁴⁶ There is significant logic in the argument that we cannot begin to disentangle the complex epiphenomena of conflict until the heat has gone out of current political debates. But the reconstitution of the past will, of course, be swayed by the availability of empirical evidence and what remains of living memory.

A telling example in the Irish context is provided by the Witness Statements concerning the 1913–1921 revolutionary period, which were collected on behalf of the Irish state between 1947 and 1957.¹⁴⁷ Together with the Military Service Pensions collection,

¹⁴⁴ Personal interview with victim, Derry, Northern Ireland, 30 August 2012.

¹⁴⁵ For an up to date overview of the theoretical underpinnings of the field, see *THEORIZING TRANSITIONAL JUSTICE* (Claudio Corradetti et al. eds., Surrey, UK, Ashgate 2015).

¹⁴⁶ Professor Chris McCrudden, senior human rights professor at the School of Law, Queen’s University Belfast, was one of twelve academics who met with Pablo de Greiff at a roundtable at Queen’s University Belfast on Wednesday 11 November 2015. The event was scheduled as part of the UN rapporteur’s official visit to Northern Ireland.

¹⁴⁷ A total of 1773 statements were collected. See www.bureauofmilitaryhistory.ie (last visited Nov. 17, 2015).

these accounts (now available online) have profoundly influenced the historiography of this critical period in Irish history.¹⁴⁸ It is right and fitting that such a valuable archive should be widely consulted and used, but there are inevitable gaps.

A mere eight percent of statements were taken from women, and the collection is by its nature dominated by militaristic (and sometimes self-serving) accounts of the period.¹⁴⁹ The Directors had an understandable preoccupation with gathering information from well-known public figures but these dominate at the expense of what are arguably the most valuable accounts—from ordinary rank and file soldiers who reflect more candidly on motivation, internal organizational tensions, and personal consequences.¹⁵⁰ This is a salutary reminder that what future generations make of the conflict in Northern Ireland will be significantly swayed by the source material we bequeath to them. The longevity of oral history material is thus both an opportunity and a challenge.

Finally, with regard to the key issue of ownership, victims tend to fare better in oral history encounters than in journalistic or legal settings. At the very least they should have some say in what happens to their story and reserve the right to be consulted on that which can or should be made public.¹⁵¹ Whether openly linked to advocacy or not,

¹⁴⁸ Recent historical accounts of the period not surprisingly draw heavily on the Bureau of Military History collections. See, for example, MARIE COLEMAN, *THE IRISH REVOLUTION, 1916–1923* (Harlow, UK, Pearson 2013); CHARLES TOWNSEND, *THE REPUBLIC: THE FIGHT FOR IRISH INDEPENDENCE, 1918–1923* (London, Allen Lane 2013); and DIARMAID FERRITER, *A NATION AND NOT A RABBLE: THE IRISH REVOLUTION, 1913–23* (London, Profile Books 2015).

¹⁴⁹ See Eve Morrison, *The Bureau of Military History and Female Republican Activism, 1913–23, in GENDER AND POWER IN IRISH HISTORY* 59–84 (Maryann Gialanella Valiulis ed., Dublin, Irish Acad. Press 2009).

¹⁵⁰ See Diarmaid Ferriter, “*In Such Deadly Earnest*”: *The Bureau of Military History*, 12 DUBLIN REV. 36, 36–65 (Autumn 2003).

¹⁵¹ This follow-up work is critically important for victims as one individual may be ready to tell their story but another family member may take an entirely different view. One prison officer whom I interviewed was, for example, ready to talk about the shooting dead of his father but, upon review of the transcript with his still deeply traumatized sister, they decided on reflection to withdraw the interview.

an oral history interview cast in the right mold can, as noted, be therapeutic and even empowering. Some of this arises from the simple process of helping people to acknowledge the abnormality of that which they endured. In a typical pre-interview conversation, a teacher that I interviewed for the peace process archive emphasized that she had nothing “out of the ordinary” to contribute and therefore wondered about the value of including her story. In the course of the interview it became clear that her experience of teaching through the conflict was not by any standards “ordinary”:

The Army were in the school, in their own block, whilst there were pupils in the school ... and there were riots, kind of every day, literally outside the school gate ... there were raids on homes, there was people shot, there was funerals, there was—I mean occasionally when the bullet came through my window, there was that. There was an odd gun battle, across the school playground.¹⁵²

Emphasizing the value of such preparatory work, Sloan suggests that, when fueled with the right empathy, oral historians create “an atmosphere of advocacy” for the narrators with whom they collaborate.¹⁵³

Oral history is moreover well placed to develop sustainable models of capacity building. In contrast to the skills and qualifications necessary to offer legal representation to victims, the interview methodology is relatively accessible.¹⁵⁴ In

¹⁵² Personal interview with Grainne McCafferty, Derry, Northern Ireland, 30 August 2012.

¹⁵³ Stephen M. Sloan, *The Fabric of Crisis: Approaching the Heart of Oral History*, in *LISTENING ON THE EDGE: ORAL HISTORY IN THE AFTERMATH OF CRISIS* 262 (Mark Cave & Stephen M. Sloan eds., Oxford, Oxford Univ. Press 2014).

¹⁵⁴ See ANNA BRYSON & SEÁN MCCONVILLE, *THE ROUTLEDGE GUIDE TO INTERVIEWING, ORAL HISTORY, SOCIAL ENQUIRY AND INVESTIGATION* 1-5 (London, Routledge 2014).

designing the *Peace Process: Layers of Meaning* project, we thought long and hard about how we might share resources with research participants. In addition to interviews that we ourselves conducted, we settled on an interview training program with a distinct ‘training the trainers’ dynamic. The idea was that the individuals we enrolled would return to their host communities and organizations, train others, and spawn a hub of oral history in their local area.

Operating a centrally controlled but otherwise flexible program enabled us to work across wider geographic spread than would otherwise have been possible, respected the much lauded principle of subsidiarity, and provided opportunities for participants to continue this work into the future. Reflecting on how international lawyers working in rule of law and transitional justice projects might become more effective, former ECCC international prosecutor Alex Batesmith suggests:

What makes an effective lawyer in the domestic setting does not necessarily make them effective internationally. ... Western lawyers, even those from a continental civil law background, are trained to be adversarial and direct. However, lawyers working on rule of law and transitional justice projects are likely to need rather more collaborative skills, as seen in the field of international development.¹⁵⁵

As noted, this assumes even greater significance in the context of documenting and prosecuting crimes relating to sexual violence. One of the Chilean lawyers we interviewed noted:

¹⁵⁵ Alex Batesmith, *Improving the Effectiveness of International Lawyers in Rule of Law and Transitional Justice Projects* (Lawyers, Conflict & Transition project, February 2015), available at www.lawyersconflictandtransition.org/themainevent/wp-content/uploads/2014/07/improving-the-effectiveness-of-international-lawyers-25-february-2015.pdf, at 4 (last visited Nov. 18, 2015).

I was often a litigating attorney and I had to go with the victims [to court] and nobody teaches you how to support your client through that [prosecutions for sexual violence] ... if you have an attorney who hasn't the personal skills for that because they can't empathize, then it's a disaster.¹⁵⁶

Collaborative skills predicated on active listening, humility, and respect for the individual are of course the bedrock of an ethical oral history approach.¹⁵⁷ Training in these techniques could thus arguably be adapted to suit a wide range of victim-centered transitional justice objectives. Perhaps more importantly, the model of empowering victims to initiate and develop their own interview-based programs may provide an antidote to what Madlingozi characterizes as “cultural imperialism” in the guise of transitional justice.

Conclusion

We have explored the instrumentalization of victims' voices for political, legal, and transitional justice purposes, and have suggested that oral history is well placed to confront and address the attendant dangers. It would, however, be naïve to suggest that any of this happens automatically or easily. When we examine the issues more closely it quickly becomes apparent that those tasked with designing victim-centered oral

¹⁵⁶ Personal interview with Chilean human rights lawyer, Santiago, 28 April 2014.

¹⁵⁷ A recent initiative spearheaded by *Avocats San Frontiers* in Tunisia embraces elements of this model. It focuses on helping lawyers to learn to actively listen to victims, to communicate effectively with victims about the impact of proposed mechanisms of transitional justice and to train them in appropriate techniques for representing and defending victims. Personal interview with staff from *Avocats San Frontiers*, Tunis, 19 June 2014.

history mechanisms—whether from the top down or bottom up—must square with many of the same fundamental dilemmas.

The inherent subjectivities of the interview process, and the related implications of “speaking for others,” have been well rehearsed in the academic literature.¹⁵⁸ In the aftermath of what has been dubbed “the crisis of representation,” there arguably followed a Platonic pursuit of the individual, authentic, and unfiltered voice.¹⁵⁹ One of the risks associated with this prioritization—if not fetishizing—of the individual voice is that it may fail adequately to consider the extent to which researchers through unequal power relationships inevitably shape voice.¹⁶⁰ Oral historians are of course by no means immune to the dangers of instrumentalizing voice, ossifying identity, and immobilizing victims. For example, in a scathing criticism of what she terms the “explanatory industry” of gathering Southern Sudanese narratives of displacement Kindersley cautions against the “narrative trap” associated with a pre-determined “life-story” approach. She further suggests that such a “trap” is set by a fundamental failure to question powerful historical and political concepts, such as displacement and exile.¹⁶¹

Another associated criticism of “voice-centered” projects is that they may miss important structural patterns and inequalities and thus serve to abdicate our responsibility to speak out against oppression (a responsibility that some would argue

¹⁵⁸ For a seminal essay on the appropriation of voice, see Linda Alcoff, *The Problem of Speaking for Others*, 20 CULT. CRIT. 5, 5-32 (1991-92). For an oral history context, see Thomson, A., *Four Paradigm Transformations in Oral History*, 34(1) ORAL HIST. REV. 49, 49-70 (2007).

¹⁵⁹ See Egon G. Guba & Yvonna S. Lincoln *Paradigmatic Controversies, Contradictions, and Emerging Confluences* in HANDBOOK OF QUALITATIVE RESEARCH 191-215 (Denzin N. & Lincoln Y. eds., Thousand Oaks, California 2005).

¹⁶⁰ Lisa A. Massei & Alecia Youngblood Jackson, *Introduction: the Limit of Voice*, in VOICE IN QUALITATIVE INQUIRY: CHALLENGING CONVENTIONAL, INTERPRETIVE, AND CRITICAL CONCEPTIONS IN QUALITATIVE RESEARCH 2 (Mazzei, L. & Jackson, A.Y. eds., Routledge, London 2009).

¹⁶¹ Nicki Kindersley, *Southern Sudanese Narratives of Displacement, and the Ambiguity of “Voice”*, 42 HIST. IN AFRICA 203, 232 (2015).

is incurred by privilege).¹⁶² Community-led participatory-action research projects generally handle this dilemma better than academic or state led initiatives. They ideally: engage contributors at every stage in the process (conception, design, decision-making, and management); respect, rather than deride collective perspectives; and they are often explicitly linked to advocacy.¹⁶³ But here too, there are dangers. By paying too much homage to the needs of local communities and collective social units, we risk revisiting the specter of narrative manufacture and may become entrenched in our respective silos, with limited opportunity to hear the “other’s” voice. Reflecting on their experience of both bottom-up and top-down “story-telling” initiatives in Northern Ireland, Hackett and Rolston note that, even within oral history or “story-telling” circles there exists a variety of approaches, each with their own particular combination of benefits and weaknesses:

There is no holy grail to be found in the uncritical acceptance of official storytelling mechanisms over unofficial ones, or vice versa. The ability of official mechanisms to break out of the confines of the group or community in which the victim exists to come up with a narrative that has a wider legitimacy is a benefit that should not be rejected out of hand.¹⁶⁴

Reflecting on the vacillation between individual and collective perspectives in modern law’s responses to mass atrocities, Osiel suggests that “the curious wavering ... seems to reflect an underlying uncertainty within the law about who “really” occupies any of

¹⁶² See Alcoff, L., *The Problem of Speaking for Others*, Ch. 7 in VOICE IN QUALITATIVE INQUIRY: CHALLENGING CONVENTIONAL, INTERPRETIVE, AND CRITICAL CONCEPTIONS IN QUALITATIVE RESEARCH 117, at 119 (Mazzei, L. & Jackson, A.Y. eds., Routledge, London 2009).

¹⁶³ Lundy, P. & McGovern, M., *Whose Justice? Rethinking Transitional Justice from the Bottom Up*, 35(2) J.L. & SOC’Y at 284 (2008).

¹⁶⁴ Claire Hackett & Bill Rolston, *The Burden of Memory: Victims, Storytelling and Resistance in Northern Ireland*, 2(3) MEMORY STUD. 355, 371 (2009).

the three recurrent categories: perpetrators, victims, and beneficiaries” and that this ambivalence has weighty implications across the legal landscape.¹⁶⁵ Likewise, the oral historian cannot presume to ignore, without consequence for both current and future generations, the obligation to reflect candidly and honestly on the analytical and moral apparatus that informs our categorization, selection, and analysis.

These challenges have been brought center-stage in Northern Ireland as a result of the latest attempt to provide an overarching mechanism for dealing with the past. In December 2014, the five main political parties and the British and Irish governments signed the Stormont House Agreement.¹⁶⁶ This contains provision for a range of mechanisms including a Historical Investigations Unit to take forward “Troubles-related deaths,” an Independent Commission on Information Retrieval to enable victims and survivors to seek and privately receive information about the deaths of their next of kin, an Oral History Archive, and an Implementation and Reconciliation Group to oversee themes, archives, and information recovery. The Agreement clearly states that “processes for dealing with the past should be victim-centered,” and further commits all mechanisms to the principle of “acknowledging and addressing the suffering of victims and survivors.”¹⁶⁷

The inclusion of an Oral History Archive designed to “provide a central place for people from all backgrounds (and from throughout the UK and Ireland) to share experiences and narratives related to the Troubles” is significant on a number of levels. Firstly it

¹⁶⁵ Osiel, M., *Who Are Atrocity’s “Real” Perpetrators, Who Its “True” Victims and Beneficiaries?*, 28(3) ETHICS & INT’L AFF. 281, 282-83 (2014).

¹⁶⁶ The Stormont House Agreement (SHA), Northern Ireland Office (Dec. 23, 2014), *available at* www.gov.uk/government/publications/the-stormont-house-agreement (last visited June 4, 2015).

¹⁶⁷ *Id.* at paras 21 and 30.

holds the potential to broaden the canvas on dealing with the past in Northern Ireland, to include consideration of vitally important themes such as gendered and rural dimensions of conflict. Secondly it can provide an alternative outlet for those victims who either do not wish to engage with the proposed prosecutorial and truth recovery mechanisms or who may be frustrated by their limited ability to deliver justice and truth. Given the long-standing gap in Northern Ireland between the impulse to collect and the obligation to preserve testimonies of the past, it is also significant that the new Archive is tasked with “drawing together and working with existing oral history projects.”¹⁶⁸ However, as detail on the shape and scope of the proposed Archive slowly unfolds, attention has been drawn to many of the key concerns raised in this article.¹⁶⁹ At time of writing, we are yet awaiting a positive articulation of the vision for the proposed Archive, detail on its acquisitions policy, information as to how it proposes to work with and through existing groups, and crucially, how its governance structure might satisfy the essential stipulation that it shall be “independent and free from political interference.”¹⁷⁰

¹⁶⁸ *Id.* at paras 22-24.

¹⁶⁹ In February 2015 I was invited to join a team of lawyers and civil society activists who wished to explore in the necessary level of detail how the past-related elements of the Stormont House Agreement might be implemented in practice, in a way that would be both human-rights compliant and “victim-centered”. The goal was to produce a Model Bill with explanatory notes and my task was to advise on the Oral History Archive. I approached this work from two angles: that of an academic who has engaged victims’ voices for research purposes and that of a consultant who has trained and advised victims and others with regard to the design and development of sensitive interview-based projects. The Model Legislation and Explanatory Notes, setting out (within the constraints of the Stormont House Agreement) our optimum framework for the implementation of the proposed mechanisms is available at: www.amnesties-prosecution-public-interest.co.uk/output-type/stormont-house-agreement (last visited Nov. 28, 2015).

¹⁷⁰ For an overview of some of the key concerns see Anna Bryson, “The Stormont House Oral History Archive, PRONI and the Meaning of Independence”, *available at* <www.rightsni.org/2015/10/the-stormont-house-oral-history-archive-proni-and-the-meaning-of-independence-guest-post-by-dr-anna-bryson> (last visited Nov. 28, 2015).

Oral history is often viewed as a “soft alternative” to justice and truth-facing mechanisms for dealing with the past. The fall-out from the Boston College Tapes controversy imploded any such notion and significantly heightened awareness of the legal and ethical implications of recording post-conflict interviews. It has been depicted as a body blow to oral history but by forcing practitioners to critically reflect on their theory, method and praxis, that controversy has arguably served a useful purpose. Taking the engagement of victim voice in transitional justice as a case study, I have sought to illustrate here that an oral history critique can usefully illuminate the dangers of manipulation, reification, and immobilization on the one hand, and the prospect of individualizing, humanizing, and empowering on the other.

Whilst acknowledging that oral history is not immune to the dangers associated with instrumentalization I have suggested that it *can* offer an appropriately fluid and reflexive approach to the concept of “victim-centeredness.” At the heart of this argument is a belief that victimhood, by its nature, defies neat categorization and must therefore be addressed with a suitably attuned instrument. A key element of that sensitivity is an awareness of the inherent subjectivities of both subject and practice. Indeed perhaps the most important element that oral historians can bring to the interview laboratory is a self-critical, reflexive, and open-minded spirit of enquiry. A logical extension of this is an awareness of both the politics and the limits of knowledge production.¹⁷¹ In practice, this means that when inviting victims and others to participate in transitional justice programs, both oral historians and lawyers must endeavor to avoid over-selling their product. Within the interview process there can be

¹⁷¹ See, for example, Tariq Jazeel & Colin McFarlane, *The Limits of Responsibility: A Postcolonial Politics of Academic Knowledge Production*, 35(1) TRANSACTIONS INST. BRIT. GEOG. 109, 109-24 (2010).

moments of profound revelation, transformation, and even healing, but more often there is a slow, fractured, fraught process of revisiting the past in order to bring some small measure of assistance or comfort.

It is proper and ethical that lawyers and historians acknowledge their respective limitations, but this need not render them impotent. We can so easily box ourselves into an epistemological and methodological corner but in the end—like most professionals—we must “take a view” and proceed in good faith. Pragmatics aside, there is a compelling rationale for proceeding with compromise. Objectivity has a human, humane, limited dimension, but in that sense it is complete since it deals with our limited humanity.

Reflecting on the competing requirements of intellectual and political life, Cohen notes that the former thrives on “a spirit of skepticism, doubt, and uncertainty” but this need not become an “alibi for inaction.” Instead, he insists we must “find the best guide to each one—then confront the tension that results.”¹⁷² In a similar vein, I have argued that—cast in the right mold—the theory and praxis of oral history can usefully illuminate the tensions between legal and historical approaches to engaging voice, and ultimately offer guidance to the shared challenge of victim-centered transitional justice.

¹⁷² Stan Cohen, *Intellectual Scepticism and Political Commitment: The Case of Radical Criminology*, in *NEW CRIMINOLOGY REVISITED* 123, 127 (P. Walton & J. Young eds., London, Routledge 1989).